90-774

NO.

Supreme Court, U.S.
FILED
NOV 13
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

DAN M. LINKOUS,

Petitioner

versus

THOMAS J. STOVALL, ET. AL.,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Dan M. Linkous
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QUESTIONS PRESENTED

1. Where no exception provided by Rule 11, F.R.A.P., to limit or delay the transmittal of the record from U. S. District Court to Circuit Court of Appeals is applicable, is an unwillingly pro se appellant in a highly complex and controversial case which has been vigorously pursued entitled to extension of time or to a revised briefing schedule where brief was improperly scheduled to be filed prior to completion of the designated transcript, and the docket sheet and numbered trial court documents which never were transmitted to the Court of Appeals, nor complete and available in the U. S. District Court Clerk's office for use in preparation of the appellant's appendix and brief?

2. Is denial of an appellant's first request for extension of time to file appellant's brief reasonable and just, when U. S. District Court proceedings concerning pre-appeal and post-appeal matters are ongoing and preclude adequate access to complete transcript documents, whose decisions may affect appellant's brief content, and where no Circuit Court of Appeals or U. S. District Court "Order" or "Agreement" of parties exists to allow none of the transcript to be

sequentially numbered and transmitted to the Circuit Court of Appeals for judicial and appellant access?

3. Where appellant is willing to pay for and arrange transmission of the appeal transcript from the Circuit Court of Appeals after transfer from the U. S. District Court, is it justifiable and appropriate to deny appellant the right to access to the sequentially numbered transcript documents for full and complete preparation of appellant's appendix and brief over the opposition of one of the defendants whose reasoning was intended solely to obstruct appellant's ability to file brief and appendix and therefore obstruct appellant's right to appellant review of his case issues?

4. In a case that spans 5 years, nearly 60 depositions, thousands of hours of work effort, hundreds of thousands of dollars expended on discovery and trial preparation, and has significant albeit controversial issues addressed allowed to be more readily dismissed on procedural or technical nuances to preclude the memorializing of the events in appellant's brief to forestall adjudication of sensitive and controversial issues and obstruct the appeal process so as

to deny appellant his constitutional right to access to the courts, equal application and protection, impartial tribunal, and substantive due process?

5. Does our judicial process allow the Fifth Circuit Court of Appeals' judges from Texas powerful law firms whose past associates represent appellees in appellant's case influence the survival of appellant's appeal through the numerous technical and procedural methods to foreclose appellant's right to brief his case and have it adjudicated on its merit as opposed to being high-handedly and more rigidly treated so that it can be dismissed regardless of its complex, controversial, and potentially meritoriously significant issues?

LIST OF ALL PARTIES

Daniel Michael Linkous
Plaintiff, Appellant, Petitioner

James M. Murphy
Previous counsel for Danny Michael Linkous—Petitioner

Dean Huckabee—Judge
Defendant, Appellee, Respondent

Arthur Lesher—Judge
Defendant, Appellee, Respondent

Thomas J. Stovall—Judge
Defendant, Appellee, Respondent

Donn C. Fullenweider—Ex-wife's attorney
Defendant, Appellee, Respondent

Donald Peter Fogo—Attorney ad litem
Defendant, Appellee, Respondent

Muriel Flake—Psychologist
Defendant, Appellee, Respondent

Nancy L. Linkous—Petitioner's ex-wife
Defendant, Appellee, Respondent

Thomas Henderson—Bankruptcy attorney
Defendant, Appellee, Respondent

Charles Long—Bankruptcy Attorney
For Peter Johnson—Trustee
Petitioner Chapter 7 (Non-direct party)

Jerry Smith—Judge
Fifth Circuit Court of Appeals Judge
Requested disqualification by Petitioner

TABLE OF CONTENTS

PAGE

QUESTIONS PRESENTED i

LIST OF ALL PARTIES iv

TABLE OF CONTENTS v

TABLE OF AUTHORITIES x

OPINIONS BELOW 2

JURISDICTION 5

CONSTITUTION, STATUTES, RULES, AND TREATISES INVOLVED 6

STATEMENT OF THE CASE 19

REASONS FOR GRANTING THE WRIT 44

I. IT WAS INAPPROPRIATE, UNJUST, AND ABUSIVE FOR THE DISTRICT COURT AND THE COURT OF APPEALS TO DEPRIVE PETITIONER OF HIS APPEAL BY MISHANDLING THE RECORD AFTER NOTICE OF APPEAL WAS FILED, FAILING TO ADHERE TO F.R.A.P. PROCEDURE, AND DENYING A REASONABLE FIRST EXTENSION OF TIME TO FILE APPELLANT'S BRIEF. 44

II. THE DISREGARD FOR ADHERENCE TO FEDERAL RULES OF APPELLATE PROCEDURE TO CREATE AND PREMATURELY COMMENCE HIS BRIEFING SCHEDULE INABILITY TO ACCESS THE COMPLETE TRANSCRIPT BY APPELLANT IS OVERLY RIGID AND HIGH-HANDED TREATMENT OF A PRO SE LITIGANT ADDRESSING COMPLEX AND CONTROVERSIAL ISSUES WHEREIN THE "COMMON POLICY" IS TO ALLOW THE APPELLANT TIME, ESPECIALLY ON FIRST

APPLICATION TO ADEQUATELY AND COMPLETELY PREPARE AND SUBMIT HIS BRIEF AND HAVE ACCESS TO THE CASE DOCUMENTS WHEN OTHERWISE INACCESSIBLE, WHICH IS A STANDARDLY APPLIED AND RELATIVELY FREQUENT POLICY BY THE FIFTH CIRCUIT COURT OF APPEALS 44

III. THE ACTUAL DISHONESTY, FRAUD, DECEIT, AND MISREPRESENTATION OF A DISTRICT COURT AND THE FIFTH CIRCUIT COURT OF APPEALS IN THEIR PROCEEDINGS AND ACTIONS IN THIS CASE DEMONSTRATE REVERSIBLE DEPRIVATION OF FAIR AND IMPARTIAL TRIBUNAL, SUBSTANTIVE DUE PROCESS, EQUAL APPLICATION AND PROTECTION, AND ACCESS TO THE COURTS, BOTH IN THE TRIAL AND APPEAL COURTS OF THIS CASE 72

IV. THE EXTRAORDINARY AMOUNT OF TIME, EFFORT, MONEY, AND SIGNIFICANTLY COMPLEX AND CONTROVERSIAL ISSUES INVOLVED IN THIS CASE WHEREIN DEFENDANTS REPRESENTED BY THE MAJOR POWER-BROKER AND INFLUENCE-PEDDLER LAW FIRMS WHO HAVE REPRESENTATIVE JUDGES ON THE FIFTH CIRCUIT COURT OF APPEALS OR VERY CLOSE TIES THERE, WHICH ALLOWED THE FIFTH CIRCUIT COURT OF APPEALS SINGLE JUDGE, THEN THREE-MEMBER PANEL OF JUDGES TO MORE EASILY BE RIGID WITH APPELLANT SO AS TO PRECLUDE HIS FILING AN ACCURATE AND COMPLETE BRIEF AND THEREBY OBSTRUCTING HIS APPEAL PROCESS AND JUSTICE 72

CONCLUSION 89

APPENDIX .....(SEE SECOND BOOKLET).....vii

TABLE OF CONTENTS

PAGE

A - Fifth Circuit Court of Appeals Order, June 5, 1990 1

B - Fifth Circuit Court of Appeals Order, July 5, 1990 2

C - Fifth Circuit Court of Appeals Order, July 9, 1990 3

D - Fifth Circuit Court of Appeals Order, October 24, 1989 4

E - U. S. District Court Final Judgment, July 18, 1989 6

F - U. S. District Court Memorandum and Order, Excerpts, July 18, 1989 7

G - U. S. District Court Memorandum and Order, October 16, 1987 9

H - U. S. District Court Plaintiff's Notice of Appeal, Excerpts, August 18, 1989 11

I - U.S. Supreme Court Extension—Petition for Writ of Certiorari, October 10, 1990 17

J - Fifth Circuit Case Manager Correspondence to Petitioner, May 31, 1990 18

K - Fifth Circuit Court Clerk's Correspondence to Petitioner, April 13, 1990 19

L - U. S. District Court Plaintiff's Request ... Transmit Records, May 12, 1990 20

M - Fifth Circuit Court Clerk's Correspondence to Petitioner, May 23, 1990 22

N - Fifth Circuit Court Appellant's Response to Objection for Extension of Time, Excerpts, June 1, 1990 23

O - Fifth Circuit Court Appellant's Motion for Rehearing, Excerpts, June 18, 1990 26

P - Fifth Circuit Court Clerk Correspondence to U. S. District Court Clerk, January 29, 1990 39

Q - Fifth Circuit Court Clerk Correspondence to U. S. District Court Clerk, February 23, 1990 40

R - Fifth Circuit Court Clerk Correspondence to U. S. District Court Clerk, March 19, 1990 41

S - Fifth Circuit Court Clerk Correspondence to U. S. District Court Clerk, March 27, 1990 42

T - U. S. District Court Clerk to Fifth Circuit Court Clerk Correspondence, April 6, 1990 43

U - U. S. District Court Clerk to Fifth Circuit Court Clerk Correspondence, April 11, 1990 44

V - Fifth Circuit Court Clerk Correspondence, April 13, 1990 45

W - U. S. District Court Clerk to Fifth Circuit Court Clerk Correspondence, April 20, 1990 46

X - Fifth Circuit Court Clerk to U. S. District Court Clerk Correspondence, April 30, 1990 47

Y - U. S. District Court Clerk to Fifth Circuit Court Clerk Correspondence, May 21, 1990 48

TABLE OF CONTENTS - CONTINUED **PAGE**

Z - Fifth Circuit Court Clerk Correspondence May 31, 1990 49

AA - U. S. District Court Clerk to Fifth Circuit Court Clerk Correspondence, July 2, 1990 50

AB - Docket Sheet of U.S.D.C. Case 85-3676 (Fifth Circuit Case 89-2928), Excerpts 51

AC - Fifth Circuit Court Appellant's Request for Extension of Time . . . Received Complete Original File, Excerpts, April 20, 1990 61

AD - U. S. District Court Plaintiff's "Motion to Show Authority by U.S.D.C. Judge, May 16, 1990 62

AE - U. S. District Court Order, May 24, 1990 64

AF - U. S. District Court Order, March 23, 1990 65

TABLE OF AUTHORITIES

CASES	PAGE
Adamson v. California, 332 U.S. 46, 61 (1947)	62
Alcorn County, Miss. v. U. S. Interstate Supplies, 731 F.2d. 1160 (5th Circ. 1980)	67
Bavouset v. Shaw's of San Fran., 43 F.R.D. 296 (S.D.Tex. 1967)	62
Boddie v. Connecticut, 401 U.S. 371, 374 (1971)	85
Business Forms Finishing Service, Inc. v. Carson, 463 F.2d. 966 (7th Circ. 1971)	18,60,61
Califonia Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508, 612 (1972)	80
Cinncinati Bar Ass. v. Heitzler, 291 N.E.2d. 277 (Ohio 1972)	82
Cole v. Tuttle, 540 F.2d. 206 (5th Circ. 1976)	63
Connelly v. Gibson, 355 U.S. 41 (1957)	84
Cruz v. Beto, 405 U.S. 319 (1972)	84
Dalminter Inc. v. Jesse Edwards, 27 F.R.D. 491 (S.D.Tex. 1961)	63
Delluns v. Powell, 660 F.2d. 802 (DC Circ. 1981)	86
Dennis v. Sparks, 449 U.S. 24 (1980)	86
Draper v. Washington, 372 U.S. 487 (1963)	63
Feder Line Towing Service, Inc. v. Toledo P&WRR Co., 539 F.2d. 1107 (Ca. 7th, 1976)	85

TABLE OF AUTHORITIES - continued

CASES	PAGE
Ferguson v. M Bank Houston, N.A. 808 F.2d. 358, (5th Circ. 1986)	83
Florida v. Rodriguez, 469 U.S. 1 (1984) (Stevens J. dissenting)	63,64
Forrester v. White, 108 S.Ct. 538 (1988)	79
Gleason v. Huckabee, (Petition for Certiorari pending Case No. A-90-133)	83
Grannis v. Ordean, 234 U.S. 385 (1914)	64
Gregory v. Thompson, 500 F.2d. 59 (9th Circ. 1974)	79
Griffin v. Illinois, 76 S.Ct. 585 (1956)	64
Haines v. Kerner, 404 U.S. 519 (1972)	82,84
Hamilton, Gleason, Linkous v. Stovall, (5th Circ. Case No. 87-6152) cert. denied (1987)	79
Harlow v. Fitzgerald, 457 U.S. 800 (1982)	86
Harper v. Merkle, 638 F.2d. 848 (5th Circ. 1981)	79
Hickman v. Taylor, 329 U.S. 495, 507 (1947)	76
Hurtado v. Calfornia, 110 U.S. 516, 535 (1884)	64
In re Boyd, 308 S.O.2d. 13 (Fla. 1975)	83
In re Gilbert, 286 U.S. 6, (1927)	82
In re LaMotte, 341 S.O.2d. 513 (Fla. 1977)	83

CASES	PAGE
In re Leon, 440 S.O.2d. 1267, 169 (Fla. 1983)	83
In re Murchison, 349 U.S. 133 (1955)	81
Kicklighter v. Nails by Jennee, 616 F.2d. 734 (5th Circ. 1980)	63
Lawrence v. McCalmont, 43 U.S.(2 How.) 426 (1844)	85
Liljeberg v. Health Services, 486 U.S. 847 (1988)	64
Lindsey v. Normat, 405 U.S. 56 (1972)	64
Linkous v. Henderson, (5th Circ. Case No. 89-6058) cert. denied (1990)	86,87
Linkous v. Johnson, (5th Circ. Case No. 89-2913) cert. denied (1990)	87
Linkous v. Klevenhagen, (5th Circ. Case No. 87-2100) cert. denied (1987)	87
Linkous v. Linkous, (Tex. S.Ct. Case No. C-7509) cert. denied (1988)	87,88
Malhoit v. So. Cal. Retail Clerks Union, 735 F.2d. 1133 (9th Circ. 1984)	84
Marbury v. Madison, 5 U.S. 137 (1803)	65
Marshall v. Jerrico, 446 U.S. 238 (1980)	66,81
Matter of DeLucia, 387 A.2d. 362 (N.J. 1978)	81

CASES	PAGE
McAuliff v. New Bedford, 155 Mass. 216 29 N.E. 517, 518 (1982)	71,66, 67
Mitchell v. Forsyth, 472 U.S. 511 (1985)	84
Mitchum v. Foster, 407 U.S. 255, 242	
NAACP v. Button, 83 S.Ct. 328, 336 (1963)	80
National Hockey League v. Met Hockey Club, 427 U.S. 639 (1976)	67
Nicodemus v. Chrylser Corp., 596 F.2d. 152, 155-57 (6th Circ. 1979)	68
Offutt v. U.S., 348 U.S. 11	62
Olmstead v. U.S., 277 U.S. 428 (1927)	69
Peacock Records, Inc. v. Checker Records, Inc., 430 F.2d. 85 (7th Circ. 1979)	81
Price v. McGlathery, 792 F.2d. 472 (5th Circ. 1986)	61,62
Pryor v. U.S. Postal Service, 769 F.2d. 281 (1985-5th Circ.)	84
Pulliam v. Allen, 466 U.S. 522 (1984)	79,80
Rags Couture Inc. v. Hyatt, 774 F.2d. 1350, 1355 (5th Circ. 1985)	
Reserve Mining Co. v. Lord, 529 F.2d. 181 (8th Circ. 1976)	69

CASES	PAGE
Rheaume v. Tex. Dept. of Pub. Safety, 666 F.2d. 976 (5th Circ. 1982)	80
Ridgeway v. Baker, 720 F.2d. 1409	
Ryland v. Schapiro, 708 F.2d. 967 (5th Circ. 1983)	70
Salter v. Upjohn, 543 F.2d. 649 (5th Circ. 1979)	76
Schacht v. U.S., 348 U.S. 58 (1970)	69
Sedima, S.P.R.L. v. Imrex Co., 105 S.Ct. 3275, 3285 N. 14 (1985)	
Slavin v. Curry, 574 F.2d. 1256 (5th Circ. 1979)	85
Smith v. Jackson Tool & Dye, Inc., 426 F.2d. 5 (5th Circ. 1970)	69,70
State of Texas v. Gulfwater Benefaction, 679 F.2d. 85 (5th Circ. 1982)	85
Sutliff Inc. v. Donovan Co., 727 F.2d. 648, 652 (7th Circ. 1984)	81
Taylor v. S&D Enterprise, 601 F.2d. 175 (1979)	85
Tummey v. Ohio, 273 U.S. 510, 523 (1927)	62
U.S. v. Brown, 539 F.2d. 467 (5th Circ. 1976)	71
U.S. v. Johnston, 268 U.S. 220 (1925)	71
U.S. v. McFerran, 568 F.Supp. 804 (S.D.Tex. 1983)	71

Constitution, Statutes, Rules, and Treatises	PAGE
U.S. v. Ohio Power Co., 353 U.S. 98 (1957)	61
Wolff v. McDonnell, 418 U.S. 539 (1974)	80
Yick Wo v. Hopkins, 118 U.S. 356 (1886)	70
Zarcone v. Perry, 572 F.2d. 52 (2nd Circ. 1978)	79

Constitution, Statutes, Rules, and Treatises

Constitution of the U.S. Preamble	6,72
U.S. Constitution	
Article 3	6,72
Article 4	7,70,72
Constitution of the U.S.	
Amendment 1	7,70
Amendment 5	7,8,70
Amendment 7	8
Amendment 8	8
Amendment 14	8,9,70
18 U.S.C. §§ 1961, 1962, 1963, 1964, 1965, and 1966 (R.I.C.O.)	2,5,9,27, 74,75
28 U.S.C. § 453	9,10
28 U.S.C. § 455	10,48
28 U.S.C. § 1254	5
28 U.S.C. § 1291	5
28 U.S.C. § 1331 and 1343(3)(4)	5,10
28 U.S.C. § 2201 and 2202	5,53
42 U.S.C. § 1983, 1985, 1986 and 1988	2,5,10,11 24,27,53,74,75
Texas Family Code § 11.11	84,70 5,24

Constitution, Statutes, Rules and Treatises	PAGE
F.R.A.P. Rule 10(a)	3,11,17,58
F.R.A.P. Rule 11	60,59,58,51,57,3,12,13,14,17
F.R.A.P. Rule 12	3,14,17,58,59
F.R.A.P. Rule 27	3,14
F.R.A.P. Rule 30	3,14,15
F.R.A.P. Rule 31	3,15,59,60
Fifth Circuit Local Rule	
Rule 10.2	3,15,58
Rule 11.1	3,15,48,49,51,58,59,60
Rule 11.2	3,16,48,49,51,58,59,60
Rule 27.1	3,16
Rule 27.2	3,16
Rule 30	3
Rule 31	3
Rule 42.3	3,16,17
Rule 45.2	3,17
9 Moore's Federal Practice	33,43
§ 210.03	58
§ 211.05	59,60
§ 211.12	58,59
§ 226.02	60,61
Wright and Miller Federal Civil Practice and Procedures § 2036.	33,43
Code of Judicial Conduct for U.S. Judges, 69 F.R.D. 273 (1975)	79
ABA Model Rules of Professional Conduct	18,79
ABA Model Code of Professional Responsibility	18,79
ABA Model Standard for Leading to Judicial Discipline	18,19 79
Appeals to the Fifth Circuit (Issue 4, 1989) at Chapter _____ p. _____.	

Constitution, Statutes, Rules and Treatises	PAGE
Borkin, Joseph; The Corrupt Judge, Clarkson N. Potter, Inc. N.Y. 1962, pp. 1-5.	81
Civil R.I.C.O. Statutes and Implied Elements, 14 Tech. L. Rev. 377 (1983), Patton	77
Devitt & Black, Supplement, Chapter 100, pp. 826-843.	77
Fifth Circuit Judicial District Counsel Court Reporter Act	14
Stern, Robert L., Supreme Court Practice, 6th ed. 1986.	61
Tribe, Lawence, American Constitutional Law, 2nd ed., 1988.	

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DAN M. LINKOUS,

Petitioner

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THOMAS J. STOVALL, ET. AL.,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner Dan M. Linkous, pro se, respectfully requests that a Writ of Certiorari issued to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in the above-entitled cause on July 9, 1990.

OPINIONS BELOW

Petitioner filed June 28, 1985, his "original complaint" and subsequently amendments to such were made by Petitioner. On October 16, 1987, the presiding U.S. District judge dismissed claims against some of the defendants and disallowed the 1983 civil rights claims (App. G), but allowed Petitioner to pursue by amended pleading R.I.C.O. allegations against the remaining defendants.

Further amendments to Petitioner's complaint were made as discovery was allowed and several rulings by the presiding U.S. District judge and the magistrate assigned to oversee discovery were made. Prior to complete discovery, this case was set for jury trial, July 11, 1989, only to be precipitously canceled July 14, 1989, and subsequently July 19, 1989, the case was dismissed by "final judgment" (App. E) and "memorandum and order" (App. F).

Petitioner filed August 1, 1989, his "notice of appeal" (App. H) and timely and appropriately perfected such appeal to the Fifth Circuit Court of Appeals. Matters pre- and post-"notice of appeal" were carried on by the U. S. District Court and the complete transcript on appeal with

sequentially numbered pages was not transmitted to Fifth Circuit Court of Appeals per F.R.A.P. 11. Other occurrences precluded the completion of the transcript, accurate completion of all statement of facts, and transcript was not sequentially numbered, nor any of it transmitted to the Fifth Circuit Court of Appeals. The case file was apparently retained in the U. S. District Court Clerk's and presiding judge's possession and made relatively inaccessible to Petitioner. Defendants submitted to the Fifth Circuit Court of Appeals "request for dismissal of Petitioner's appeal" due to lack of jurisdiction and sanctions against Petitioner which resulted in a Fifth Circuit Court of Appeals order of October 24, 1989 (App. D) denying sanctions and dismissal and accepting jurisdiction of case on appeal by appellant.

Petitioner received his briefing schedule (App. K) April 26, 1990 from the Fifth Circuit case manager some two weeks after it was allegedly sent, on April 13, 1990. Petitioner promptly filed his "request of the U.S. District Clerk to transmit the record to the Fifth Circuit" (App.*L*) according to F.R.A.P. 10, 11, 12, 27, 30, 31, 42, and 45 and Fifth Circuit Local Rules 10, 11, 27, 30, 31, 42, and 45 and also

filed with the Fifth Circuit Court "appellant's extension of time to file brief" on May 11, 1990 (App. AC) with good cause reasons indicated for such relief.

On June 5, 1990, single panel member Judge Jerry Smith denied appellant's request for extension of time and transmission of file from district to circuit court" (App. A). Petitioner filed June 18, 1990, his "request for rehearing by three-judge panel to reconsider denial of extension, reinstate appeal, grant extension to file appellant's brief, and transfer case file to Fifth Circuit" per F.R.A.P. and Fifth Circuit Local Rules (App. O). On July 5, 1990, the three-member panel of judges Williams, Smith, and Higginbotham denied Petitioner's reconsideration (App. B).

On July 9, 1990, the Fifth Circuit Court of Appeals dismissed Petitioner's appeal for want of prosecution secondary to failure to file brief (App. C). On September 23, 1990, Petitioner filed his "motion to extend time to file petition for Writ of Certiorari" with the United States Supreme Court which, after presentation to Honorable Justice White on October 10, 1990, was granted an extension of time to file "Petition for Writ of Certiorari" until November

13, 1990. The 90th day after dismissal of Petitioner's case by the Fifth Circuit Court of Appeals, exclusive of holidays or weekends, was October 8, 1990. Copy of said order of extension is enclosed as App. I.

JURISDICTION

Petitioner's "original complaint" bringing civil rights suit damages and requesting injunctive and declaratory relief is pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 2201 and 2202; also sought was declaratory relief that § 11.11 of the Texas Family Code is facially unconstitutional as applied to him and his family. The jurisdiction of the U.S.D.C. was invoked under 28 U.S.C. § 1331 and 1343(3)(4) since this arises under the constitution and laws of the United States. After amendment of Petitioner's complaint, jurisdiction is further invoked for injunctive relief and damages purusant to 18 U.S.C. §§ 1961, 1962, 1964, 1965, and 1966 (R.I.C.O.). The jurisdiction of the Fifth Circuit Court of Appeals is pursuant to 28 U.S.C. § 1291. The jurisdiction of the U.S. Supreme Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTION, STATUTES, RULES, AND TREATIES INVOLVED

CONSTITUTION OF THE UNITED STATES

PREAMBLE: We, the people of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity do ordain and establish this constitution for the United States of America.

U.S. CONSTITUTION ARTICLE 3:

§ 1: The judicial power of the United States shall be vested in one supreme court and in such inferior courts as the congress may from time to time ordain and establish. The judges, both of supreme and inferior courts, shall hold their offices during good behavior, ...

§ 2: The judicial power shall extend to all cases in law and equity arising under this constitution, the laws of the United States, and treaties made or which shall be made under their authority . . . the controversies to which the United States shall be a party; the controversies between two or more states; between a state and citizens of another state; between citizens of different states; . . . .

U.S. CONSTITUTION ARTICLE 4:

§ 1: Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved and the effect thereof.

§ 2: The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

§ 4: The United States shall guarantee to every state (inferentially its citizens individually and collectively) in this union a republican form of government . . . .

CONSTITUTION OF THE UNITED STATES

AMENDMENT 1: Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble and to petition the government for a redress of grievances.

CONSTITUTION OF THE UNITED STATES

AMENDMENT 5: No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of the grand jury excepting cases aris-

ing in the land or naval forces or in the militia when in actual service in time of war or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation.

CONSTITUTION OF THE UNITED STATES

AMENDMENT 7: In suits at common law where value and controversy shall exceed $20, the right of trial by jury shall be preserved, ...

CONSTITUTION OF THE UNITED STATES

AMENDMENT 8: Excessive bail shall not be required nor excessive fines imposed, nor cruel and unusual punishments inflicted.

CONSTITUTION OF THE UNITED STATES

AMENDMENT 14: No state shall make or enforce any law which shall abridge the privilege of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law nor deny

to any person within its jurisdiction the equal protection of the laws.

18 U.S.C. §§ 1961 - 1965 (Civil R.I.C.O.): The district courts of the United States shall have jurisdiction to prevent and restrain violations of § 1962 . . . any civil action or proceeding under this chapter may be instituted in a district court of the United States. . . .

18 U.S.C. §§ 1961 - 1966 (R.I.C.O.): Title 10 of the Organized Crime Control Act of 1970 permits private parties injured by reason of certain criminal acts with a cause of action for treble damages and court costs and attorney fees (§ 1964(c)), to File suiT to Redress such.

28 U.S.C. § 453: Oaths of justices and judges. Each justice or judge of the U.S. shall take the following oath of affirmation before performing the duties of his office, "I, _____, do solemnly swear that I will administrate justice without respect to persons and do equal right to the poor and to the rich and that I will faithfully and impartially discharge all the duties incumbent upon me as _____, according to the best of my abilities and understanding,

agreeably to the Constitution and the laws of the United States. So help me God."

28 U.S.C. § 455: Requirements and procedures in suggesting disqualification of a federal judge specifically (a), (b)(5)(iii), and (c).

28 U.S.C. § 1331: Federal question. The district courts shall have original jurisdiction of all civil actions arising under the constitution, laws, or treaties of the United States.

28 U.S.C. § 1343: Civil Rights and Elective Franchise provides in pertinent part; the district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person (4) to recover damages or secure equitable or other relief under any act of congress providing for the protection of civil rights, including the right to vote.

42 U.S.C. § 1983:

CIVIL ACTION FOR DEPRIVATION OF RIGHTS. Every person who under cover of any statute or ordinance, regulation, custom, or usage of any state or territory or the District of Colombia subjects or causes to be subjected any citizen of

the United States or other person within the jurisdiction thereof to the deprivation or any rights, privileges, or immunities secured by the constitution and laws shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purpose of this section, any act of congress applicable exclusively to the District of Colombia shall be considered to be a statute of the District of Colombia.

F.R.A.P. 10(a): The original papers and exhibits filed in the district court, transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the district court shall constitute the record on appeal in all cases.

F.R.A.P. 10(b): . . . appellant shall order from the reporter a transcript of the proceedings . . . . appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion. . . . appellant must make satisfactory arrangement with the reporter for the cost of the transcript.

F.R.A.P. 11(a): . . . appellant shall take any other action necessary to enable the clerk to assemble and transmit the record.

F.R.A.P. 11(b): If the transcript cannot be completed within 30 days of receipt of the order, the reporter shall request an extension of time from the clerk of the court of appeals . . . failure of the reporter to file the transcript within the time allowed, the clerk of the court of appeals shall notify the district judge and take such other steps . . . upon completion of the transcript . . . file it with the clerk of the district clerk and notify the clerk of the court of appeals . . . . When the record is complete for purposes of appeal, the clerk of the district court shall transmit it forthwith to the clerk of the court of appeals. The clerk of the district court shall number the documents comprising the record and shall transmit with the record a list of documents correspondingly numbered and identified with reasonable definiteness.

F.R.A.P. 11(c) . . . the parties may stipulate or the district court on motion of any party may order, that the clerk of the district court shall temporarily retain the record for use

by the parties in preparing appellant papers. In that event, the clerk of the district court shall certify to the clerk of the court of appeals that record, including transcript, is complete for purposes of appeal. . . . as parties may agree or the court may order, the appellant shall request the clerk of the district court to transmit the record.

F.R.A.P. 11(e): The court of appeals may provide by rule or order that a certified copy of the docket entries shall be transmitted in lieu of the entire record, subject to the right of any party to request at any time during the pendency of the appeal that designated parts of the record be transmitted. If the record or any part thereof is required in the district court for use there pending the appeal, the district court may make an order to that effect . . . subject to the request of the court of appeals and shall transmit a copy of the order and of the docket entries together with such parts of the original record as the district court shall allow and copies of such parts as the parties may designate.

F.R.A.P. 11(f): Parties may agree by written stipulation filed in the district court that designated parts of the record shall be retained in the district court . . . .

F.R.A.P. 12(A): October 11, 1982, FIFTH CIRCUIT JUDICIAL COUNSEL COURT REPORTER MANAGEMENT PLAN, SUPPLEMENT TO COURT REPORTER ACT

Upon receipt of copy of notice of appeal . . . clerk of court of appeals shall enter the appeal as soon as possible upon the docket.

F.R.A.P. 12(b): Upon receipt of the record transmitted pursuant to rule 11(b) . . . the clerk of the court of appeals shall file it and shall immediately give notice to all parties of the date on which it was filed.

F.R.A.P. 27(c): . . . a single judge of a court of appeals may entertain and may grant or deny any requests for relief . . . except that a single judge may not dismiss or otherwise determine an appeal . . .

F.R.A.P. RULE 30(f): A court of appeals may by rule applicable to all cases . . . dispense with the requirement of an appendix and permit appeals to be heard on the origi-

nal record with such copies of the record or relevant parts thereof as the court may require.

F.R.A.P. RULE 31(c): If an appellant fails to file a brief within the time provided by this rule or within this time as extended . . . dismissal of the appeal.

LOCAL RULE 10.1: Appellant's order for the transcript of the proceedings . . . shall be on a form.

LOCAL RULE 10.2: The record on appeal shall be bound in a manner which will facilitate reading with pages numbered consecutively by the clerk of the district court.

LOCAL RULE 11.1: The court reporter shall in all cases . . . acknowledge receipt of order . . . date of receipt of order . . . financial arrangements . . . number of days involved in the transcript, an estimate of number of pages . . . estimated date on which the transcript will be completed . . . a certificate that he or she expects to file the transcript with the district court within estimated time. . . . enlargement of the time for filing a transcript beyond the 30-day period fixed by F.R.A.P. 11(b) shall be filed with the clerk and shall specify in detail amount of work accomplished . . . list of outstanding transcripts for other courts due . . . verifica-

tion that this has been brought to the attention and approved by the district judge who tried the case.

LOCAL RULE 11.2: It is the responsibility of the clerk of the district court to determine when the record on appeal is complete for purposes of the appeal unless . . . within 15 days from the filing of the notice of appeal . . . the clerk of the district court shall advise the clerk of this court of the reasons for delay and request an enlarged date for the filing thereof.

LOCAL RULE 27.1: The clerk is authorized . . . to enlarge the time for filing designations as to printing under F.R.A.P. 30 and for filing briefs, answers, objections, or replies . . .

LOCAL RULE 27.2: . . . any single judge . . . in his discretion and subject to review by court . . . to enlarge for good cause shown the times prescribed by F.R.A.P. or rules of this court supplementing those rules except for the power . . . for initiating an appeal.

LOCAL RULE 42.3: THE DISMISSAL FOR FAILURE TO PROSECUTE. The clerk shall issue a notice to appellant that upon the expiration of 15 days from the date thereof the

appeal may be dismissed for want of prosecution unless prior to that date, the default is remedied. If a default is remedied within that time, the clerk shall not dismiss the appeal. If the default is not remedied within that time, the clerk may enter an order dismissing the appeal for want of prosecution.

LOCAL RULE 45.2: RELEASE OF ORIGINAL PAPERS. The clerk may release original records or paper without a court order for a limited time for purposes of printing or upon request of a party or his counsel to facilitate preparation of a brief in a pending appeal.

9 MOORE'S FEDERAL PRACTICE: The steps in the assembly, transmission, and filing of the record are governed by Rules 10, 11, and 12. When an appeal is taken from a final judgment that disposes of the entire action below, the record is no longer needed in the district court and there is no inconvenience attendant upon its transmission as the record on appeal. Rule 11 as amended in 1979, imposes no duty on the appellant to see that the record is transmitted within fixed time and eliminates all motions for extension of time for transmission. The transmission

of the record under the amended rule is the clerk's rule and dereliction in prompt transmission purely a matter of judicial administration. The want of published decisions on the subject suggests that extensions of time requested before the time has run are granted with a much more generous hand; and occasional observations in the decisions verified as suggestion. F.N.11:see (e)(g) Business Forms Finishing Service, Inc. v. Carson, 463 F.2d. 966 (7th Circ. 1971) in which the appeal was dismissed for failure to file a brief within the eleventh extension of time, perhaps an unusual example of tolerance.

ABA MODEL RULES OF PROFESSIONAL CONDUCT:

RULE 8.4 MISCONDUCT. It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

ABA MODEL CODE OF PROFESSIONAL RESPONSIBILITY:

DISCIPLINARY RULE 1-102 MISCONDUCT. A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

ABA MODEL STANDARDS RELATING TO JUDICIAL DISCIPLINE: § 3.3 GROUNDS. Grounds for discipline shall

include any conduct that constitutes the codes of judicial conduct or professional responsibility.

TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT:

RULE 8.4 MISCONDUCT. A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

STATEMENT OF THE CASE

Defendant Nancy Linkous filed divorce against Petitioner April 3, 1983, but temporary orders were not consummated until August 3, 1983; amicable settlement was precluded by power-broker influence-peddler divorce attorney Defendant Fullenweider, whose contingent fee contract with misrepresentation of Petitioner's estate by $8 million net worth and his personal agenda to "send a signal to the community and make an example of Petitioner" to display the corrupt power of the divorce industry in Harris County, Texas, has over its constituents in violation of its state and United States constitutional rights and protections. Egomaniac Defendant Fullenweider owned and controlled the family law judges and he and his "then" partner "Racehorse Haynes" controlled most of the judiciary and attorneys in the state of Texas. Fullenweider protracted the

proceedings by appointing "Fee churner court appointees" and maliciously filed frivolous contempts against Petitioner in excess of 40 times and encouraged his client Defendant Nancy Linkous to deny access of Petitioner to his children on regular basis. Because Petitioner refused multimillion dollar settlement with Attorney Fullenweider and his client and outrageous support and alimony, Petitioner was deprived of his assets to pay monthly debts and was forced into Chapter 11 Bankruptcy on advice of his attorney, July 2, 1984, after multiple lawsuits and threats of foreclosure, additional lawsuits, etc., were impending. Several state divorce judges were removed or voluntarily recused themselves because of improprieties surrounding this case of high profile in newspapers and on t.v. Defendant Fullenweider engaged the services of Tom Henderson and bankruptcy power- (with Chamberlin, Hrdlicka Tax Attns.) broker law firm Sheinfeld, Maley, and Kay to assist in the abuse of process of the bankruptcy proceedings so as to "get what he wanted." In association with court appointed psychologist Defendant Muriel Flake and ad litem attorney Don Fogo and Defendant Judge Dean Huckabee, sponsored

by Defendant Fullenweider who made known to everyone in Texas his power-control over individual family's destiny and his ability to destroy them at will because of judiciary from "top to bottom" that were "bought and paid for" who allowed injustice and disclaimed the right of an individual to his state and United States constitutional fundamental rights and liberties, FOR REELECTION OR RIGHT price.

Petitioner was wrongfully imprisoned on five occasions with a Harris County and a Dallas County court of appeals affirming such on two occasions and a third progressing to the U.S. Supreme Court who deferred action on any "divorce matters" at that time of the consideration of the "Feiock" case. Petitioner was a medical director of a hospital and a community leader; his practice of medicine was nearly destroyed, he was sued for debts numerous times without 11 U.S.C. § 362 leave of bankruptcy court stay, had letters from attorneys and judges written to his hospital and medical boards to harass him, had his house and office broken into on several occasions, had his wife assaulted on occasions by Defendant Nancy Linkous and her assistants, regularly had his phone tapped in conversations

with his children and on other occasions by influential attorney Fullenweider, had his mail routinely misdirected to his ex-wife and other mail directly taken from his box, and generally was terrorized and brutalized by the tyranny and despotic legal and judicial system in Harris County, Texas. Petitioner was forced into Chapter 7 Bankruptcy after inability to restrain the abusive process of Defendants Fullenweider, Linkous, Henderson, et al, and Appointed Trustee Peter Johnson with his attorney, Charles Long, who were "bosom buddies" of the defendants, conspired with them to protract this simple bankruptcy such that Petitioner was discharged in late 1988 and the bankruptcy is still proceeding some six years later. The bankruptcy court allowed proceedings to go forth in family law court, much of which was frivolous, unsubstantiated, and misrepresented charges of contempt, and ultimately allowed the divorce trial to go forth, considering not only custody and child support, but disbursement of separate and community property in violation of the Texas Divorce and Property Laws and the U.S. Bankruptcy Code and case law and supremacy clause.

Two weeks into the divorce jury trial, Petitioner's attorney became gravely ill, and no continuance was granted Petitioner and he was forced to precede pro se for the next four weeks of jury trial against power-broker Defendant Fullenweider. The divorce trial was stopped by the presiding judge and $17,500 a month in child support, $5 million in judgments, and all of the assets, both separate and community were granted to Defendant Nancy Linkous. Also, an illegal "trial within a trial" concerning a $500,000 asset of the bankruptcy court, which the bankruptcy had already taken hegemony over and was in process of liquidating was taken possession of at state court conspirators direction and encumbered such that nearly $150,000 of attorney administrative fees were necessary in TRO and civil contempt and sanctions against Defendants to have U.S.D.C. Judge Lynn Hughes remove Defendant Nancy Linkous from such asset and have it liquidated for the benefit of the bankruptcy estate and real creditors. Bankruptcy trustee and his attorney became implicated in the racketeering conspiracy by dismissing the actions against the defendants and rewarding them with indemnification of their

civil and criminal activities and giving them nearly $250,000 in assets, of which $50,000 was in cash. Sale of bankruptcy estate and Petitioner property across state lines and use of banks to cash bonds and write checks to pay in and out-of-state defendants occurred. This was all to the detriment of the real creditors and debtor of the estate.

During this period of time, the divorce judge, under Family Code § 11.11, took Petitioner's access to his children from him after he defeated a 26-count contempt in court. Petitioner had no contact with his children for over 8 months and was instructed by the bankruptcy court to use any court at his means to redress these ills and gain meaningful relationship again with his children. Petitioner filed his "original complaint" which was a 1983 civil rights suit in hopes of gaining access to his children, which was never addressed but put on the "back burner" for over three years by Chief U.S.D.C. Judge James DeAnda. Petitioner represented by bankruptcy and divorce counsel at that time attempted to appeal his divorce decree labeled as "ridiculous" by members of the court of appeals panel, but

two of the three court reporters refused to provide the statement of facts and his cost bond was increased to $125,000 while he was still in bankruptcy and had no ability to obtain bond or place assets in lieu of bond. The court of appeals dismissed his right to appeal and this maliciously instituted increased cost bond was taken to the U.S. Supreme Court by Petitioner's then attorney and leave to hear such matter was dismissed at each level. Petitioner contends this is "standard operating procedure" in his case to not allow him an opportunity to have his case heard on its merits before a judge or a jury but to have all of his cases illegally and unjustly dismissed or denied any relief such as leave, extensions, etc., which are otherwise routine and standard in other cases especially those represented by counsel.

Petitioner persisted in his belief in the heritage of the constitution of the United States and his undying belief in some conscionability of some judges in this country to not be "bought and paid for" and to be part of the "closed shop mentality" protecting other attorneys and judges but would have concern for individual basic fundamental liberties and

rights. Petitioner spent much time and money with attorneys to redress these ills and as he ran out of money from the intentionally protracted and increasing number of lawsuits, he had to pursue them pro se or else "give up." He has been discriminated against at all levels for representing himself because of the desire to maintain the business and commerce cartel of attorneys in litigation backed by the judges who were sponsored for their positions by those same attorneys. Petitioner appealed bankruptcy decisions to U. S. District Court and appeal files were blatantly tampered with, appeals dismissed without due consideration, and sanctions imposed upon Petitioner if he persisted in exposing the injustice of our legal and judicial system in his case. He was falsely arrested for alleged misdemeanor assault in attempting to protect his family from being beaten by three youths on two occasions, which after 18 appearances at criminal court and a 5-day jury trial, he was found innocent and all stated the case was frivolous and harassing to Petitioner. Petitioner has had the IRS perjure an affidavit and falsify information to have U.S.D.C. magistrates approve the legal seizure of all his assets, including

his medical charts and legal documents, which required Petitioner and two U.S.D.C. court proceedings under Judge Lynn Hughes, to grant injunction against them and document their admission of no taxes owed by Petitioner and eventually returned his property after 30 days. The IRS kept nearly $100,000 of various assets and Petitioner was out of medical practice for 30 days. This harmed his and his family's reputation significantly and further accomplished what the conspiracy of racketeers wanted. Petitioner persisted in proceeding with his now converted civil rights suit into a R.I.C.O. lawsuit after the 1983 civil rights suit and several defendants were severed out by U.S.D.C. presiding judge James DeAnda.

Petitioner's attorney throughout this lawsuit was constantly frustrated at the inability to carry out discovery and both U.S.D.C. presiding judge and his magistrate overseeing discovery sided blatantly with the defendants and their power-broking law firms who had members sitting on the Fifth Circuit Court of Appeals and others had "direct ties" with the other members of the Fifth Circuit Court of Appeals. Discovery was not allowed for some time in this

case and when hearings were held to set up guidelines for such they became canceled on many occasions. After discovery commenced and depositions were taken, numerous individuals refused to appear after being appropriately subpoenaed and the court refused to compel their appearance or sanction them. The U.S.D.C. in Southern District of Texas, Houston Division openly made mockery of our judicial process "to send a signal to the community and make an example of Petitioner." The more blatant the evidence elicited, of racketeering activities of the defendants, the more harsh the court became to limit discovery and to preclude due process, equal application and protection, impartial tribunal, access to the courts, and adherence to federal rules of civil procedure and evidence and adhere to prevailing case law concerning the pretrial matters in this case. During the last depositions allowed in this case, power-broker law firm Fulbright and Jaworski in writing misrepresented that the presiding judge quashed those depositions by illegal exparte conference with some defendants counsel and the presiding judge without plaintiff or his attorney notified or being present, but later presiding

judge admitted this illegal exparte conference occurred but denied he ever "entered" such order although promised verbally to do so. This incrimination of both defendants' power-broker law firms and the presiding judge in this case only brought laughter to the courtroom as they "covered up for each other." This case was scheduled for trial on July 11, 1990, but was canceled, and on July 19, 1990 dismissed after 5 years and thousands of hours of effort, and nearly 60 depositions taken, hundreds of thousands of dollars expended by Petitioner, and unestimatible time away from Petitioner's family and medical practice by petitioner to "seek justice" in this matter. FBI investigations into mail fraud, wire-tapping, theft of resources by private investigator impersonators, and criminal civil rights violations came to a halt. State law suits addressing Petitioner's inability to have any contact with his children for nearly 3 years now and redress slander, false imprisonment, assault, and other crimes perpetrated upon him by power-broking Defendant Fullenweider and his "assistants" came to a standstill. Petitioner's attorney became very depressed and frustrated, stated that he feared for his ability to practice

law in the future in Texas if he persisted in representing Petitioner in his cases as he would not be able to represent any of his future clients without judicial bias and uncooperation of opposing counsel, much less his fear of retaliation by the state bar grievance committee. Petitioner's attorney "disappeared" after the July 19, 1990, dismissal of Petitioner's law suit and took all of the records with him and refused to return those records or even communicate with Petitioner since that time. Petitioner had to, through state bar and court proceedings, obtain those documents which were returned disheveled and incomplete.

Petitioner filed his "notice of appeal" to the Fifth Circuit Court of Appeals and requested with prepayment, the transcription of the statement of facts of the hearings and asked that the federal rules of appellate procedure be followed to transmit the "record" to the Fifth Circuit Court of Appeals which was not done and has not been done to date. The U.S.D.C. presiding judge retained the "case file" in his and the U.S.D.C. clerk's possession, allegedly to finish pre-appeal matters but post appeal motion and matters were considered for several months after the appeal was perfect-

ed and no order from the U. S. District Court or the Fifth Circuit Court of Appeals or agreement of the parties was executed to allow the U. S. District Court to never make the file complete, sequentially number the file, and transmit such record to the Fifth Circuit Court of Appeals after its completion to start Petitioner's brief scheduling timetable.

Petitioner was sent a briefing schedule which allowed him 40 days to submit his appellant's brief, but matters were still ongoing in the U. S. District Court taken up after the appeal was filed and inaccessibility to that file by Petitioner was justified by the U.S. District clerk's office that the file was in judge's or law clerk's chambers. Petitioner could not prepare adequately an appendix or fully and completely prepare to submit his appellant's brief because of this and his request to transmit the record and for the U. S. District Court to show authority fell on deaf ears. Defendants filed motions to dismiss the appeal and requested sanctions at the Fifth Circuit Court of Appeals level and were denied these reliefs, with the Fifth Circuit Court of Appeals stating it had jurisdiction over these mat-

ters now and that the filing for sanctions by defendants against Petitioner was untimely relative to the final judgment. Nevertheless, the U. S. District Court continued to rule on motions and in diametric opposition to the Fifth Circuit Court of Appeals, approved the sanctions requested by the defendants in an order some months after the notice of appeal and jurisdiction of the Fifth Circuit Court of Appeals was assumed.

Petitioner submitted a request for extension of time to file appellant's brief, or in alternative, setting aside the briefing schedule prematurely sent to Petitioner until the federal rules of appellate procedure were complied with and the complete record was sequentially numbered and transmitted to the Fifth Circuit Court of Appeals so that Petitioner could either go to the Fifth Circuit Court and review the documents or request the documents be sent to him at his cost and responsibility. This extension of time request went to Fifth Circuit Court of Appeals Judge Jerry Smith, who as a single judge, denied the extension of time even in light of the numerous good causes to extend and denied Petitioner's request for U. S. District Court to trans-

mit the record to the Fifth Circuit Court despite the Federal Rules of Appellate Procedure, Fifth Circuit Court of Appeals Local Rules, and the writings of 9 Moore's Federal Practice and Wright and Miller Federal and Civil Procedure, along with prevailing case law and statements by the Fifth Circuit Court deputy clerk and case manager that "first time" extensions in a complex, voluminous case such as this especially by a pro se litigant abandoned by his attorney without access to records, who only recently got the complete transcription of statement of facts even after having paid for them months prior, was extremely reasonable and they couldn't understand why it was not granted. Judge Jerry Smith was the attorney for the City of Houston in 1985 when Petitioner's patient, Mr. Bouchard's family filed a suit against the City of Houston for wrongful death which Petitioner gave medical testimony regarding and whom Judge Jerry Smith was the main counsel in opposition to Petitioner Linkous' patient's family and their attorneys. This was a huge law suit which continues to this day. Petitioner contends that Judge Jerry Smith had then and continues to this day interest in conflict which should

have precluded him from participating in, much less rendering a controversial decision terminating this long-standing case on appeal. Judge Jerry Smith was an attorney with Fulbright and Jaworski prior to his being "sponsored" for city attorney, prior to his appointment to the Fifth Circuit Court of Appeals, and Fulbright and Jaworski just happens to be representing one of the main defendants in this case and also has one of the most influential Fifth Circuit Court of Appeals judges, Carroll Randall King sitting at the Fifth Circuit, which Petitioner feels prejudiced his case for extension of time to file appellant's brief.

During this time, Petitioner has for over 3-1/2 years been denied access or contact with his children, has been brutalized by the state district court in some of his litigations, and has his bankruptcy continuing to his detriment, along with the legal and judicial communities' attempts to deprive him of the right of commerce by restraining trade and precluding his ability to earn a living and support his new wife and two children, and carry on his litigation to redress the most heinous ills that have been perpetrated upon him and his family in the past by these power-bro-

kers and influence-peddlers of the legal and judicial system who are only concerned with the big business, commerce interests of the legal and judicial cartel and have no concern for judicial propriety, rules, or procedure for prevailing case law or anyone's United State's constitutional fundamental rights and liberties. On Petitioner's filing reconsideration for extension of time elaborating in more detail on the "good cause" the three-member panel denied reconsideration for extension of time to file appellant's brief and after such decision his appeal was dismissed for want of prosecution for failure to file appellant's brief. Petitioner has filed a request for extension of time to file his petition for Writ of Certiorari to the Fifth Circuit Court of Appeals with the U.S. Supreme Court Justice White, and this was granted until November 13, 1990. Petitioner now files his Petition for Writ of Certiorari to the Fifth Circuit Court of Appeals on this November 13, 1990, and hopes that the U.S. Supreme Court or its Fifth Circuit Court associate Justice Scalia, at this time will not disallow Petitioner his right to be treated fairly and have his issues briefed and heard regardless of the ultimate decision of the body that

reviews his brief concerning this case. Petitioner only wishes his constitutionally guaranteed and perceived rules, statutes, and case law rights to have an extension granted so that he could file his appellant's brief to memorialize the facts that have occurred in this case regardless of what decision comes from Fifth Circuit Court of Appeals or the U.S. Supreme Court. Petitioner contends that the citizens of this country have become more than cynical and embittered to the legal and judicial "industry" and are completely "fed up" with the "gamesmanship" that is required for an individual to seek redress of injustice committed upon him, his family, his liberties, or his property. Petitioner is aware of the discrimination held by attorneys against pro se litigants and their desire for all individuals to hire attorneys and pay money on both sides of the issue to keep the commerce and business industry and cartel of the legal and judicial system "at full speed." Petitioner contends this is in blatant contradistinction to the inherent wishes of the framers of the constitution and of the heritage of our early founding fathers in spirit and in intent. Petitioner does not delude himself that there is absence of integrity, moral

fiber, conscionability and concern for the average citizen's rights from abuse by the more powerful authority figures granted the responsibility and obligation along with the privilege to possess and exert such power such as our highest of judicial triers and interpreters of law. They so influence each individual's life besides the masses of individuals in their decision making process.

Petitioner has been told by numerous attorneys and judges in Harris County and in Texas generally that he or his family and friends cannot get justice in Texas or the United States because he is "taking on of the system" by wanting to be treated fairly, justly and even-handedly. Petitioner hopes that the United States Supreme Court is not complicitous in the behavior of the Fifth Circuit Court of Appeals, U. S. District Courts of Texas and the state and local courts of Texas in general wherein "might makes right" and those who don't "pay" or have "contacts" and exert influence and power, get no justice and get no access to the courts for consideration. The Supreme Court of the United States is the only bastion standing between the corrupt courts from top to bottom and the totally frustrated

and embittered public which feels as if they are governed by terror and tyranny of a totalitarian and despotic government wherein judges don't impartially try and interpret the law but have become public opinion reflectors, policy and legislative makers, and essentially "prostitutes" for the "pimp" rich and powerful of our country. Petitioner contends that for him to be given an opportunity to adequately and fully brief accurately his U. S. District Court Case for Fifth Circuit Court of Appeals review is reasonable and just and certainly should not be intimidating or threatening to the power broking, influence peddling law firms on the opposing side representing or colluding with the defendant racketeers and their "assistants" involved in this blatant and high profile disregard to an individual's constitutional rights of access to the courts with due process and equal application. Certainly Fulbright and Jaworski, Andrews and Kurth, Haynes and Fullenweider, Sheinfeld Maley and Kay, Floyd Taylor and Riley, Hirsch Glover Robinson Shiness, Wood Lucksinger, Vincent and Elkins, Butler and Binyon, and the Attorney General of Texas shouldn't be afraid to allow average citizen Petitioner

Linkous to file his appellants brief should they? Although the Supreme Court has their personal agenda to rule on only approximately 160 cases a year to "make policy" in areas of their concern, the average citizens feel they deserve consideration in their cases wherein it involves only them or a class they belong to where this "class discriminatory invidiously personal animus" is applied to them regularly in our courts most blatantly and wrongfully, and the U.S. Supreme Court is our only last hope of salvation from complete disillusionment, frustration, cynicism, and eventual anarchy of the populace.

To date, the U. S. District Court has not completed the record nor has it sequentially numbered it nor has it transmitted it to the Fifth Circuit Court of Appeals. No order from the U. S. District Court nor the Fifth Circuit Court of Appeals nor agreement of the parties exists warranting the retention of all of the documents in the U.S. District judge and clerk's possession. The reasonableness of a first time extension request of Petitioner in his particular circumstances is unequivocally reasonable and just. The fact that the wide latitude of discretion of judges allows them

to essentially "do whatever they want" regardless of its propriety, morality or legality, is not questioned by Petitioner. If indeed, the bill of rights and the constitution of the United States is "dead" by most average citizen's perceptions, then possibly we should alter it or dismantle it so as to not labor under the misconception that it exists as our protector between the government and our individual rights. Petitioner is well aware of and has been informed by numerous attorneys and judges of the "favor-trading system" and the "good-old-boy-get-along-gang" system wherein "markers" are passed out and called in in the legal and judicial system with regularity. The doctrine of near absolute immunity to all judges has allowed them to become tyrants and terrorists and abrogators of the most cherished heritage of this country given to us by our forefathers. No rationalization or personal agenda reconciliation can justify this behavior. Our legislators have no credibility, the IRS is the KGB of the United States without oversight and is out of control, and now our judiciary has taken the position that if one is not represented by an expensive, powerful law firm and pays his dues whether he can afford it or not,

he will not receive j[illegible] by the "wide latitude of discretion" given the judges for purposes originally to protect the citizenry which has now been abused to protect the business industry and commerce cartel of the legal and judicial community. Although Petitioner received standing ovations at his talks and on his radio, t.v., and newspaper appearances by the average citizens, he is ostracized and condemned by the legal and judicial community by wanting to hold them to the degree and standard of integrity, morality, conscionability and fairness that every profession and occupation should observe in this country and every citizen should speak out for to preserve democracy. Petitioner contends our rights are only as protected and effective as our vigilance in monitoring and exercising them and that democracy should through its system of separation of powers – checks and balances create dissension among the government versus the governed and the judicial tryers and interpreters of law and those who refuse to obey such responsibilities, obligations, and laws whether they are average citizens or attorneys and judges. What higher calling has been imposed upon any citizen walking the face

of this planet than to be a U.S. Supreme Court Justice and be able to do "what is right." Petitioner contends this is not just a decision that would influence thousands or millions of individuals in this country but even decisions that would affect one or a few in a particular class whether it "makes the headlines" or fosters the political notoriety and high profile fame of the presiding justice or not. Petitioner regrets that Justice Brandeis, Justice Holmes, Justice Frankfurter, and Justice Douglas are not with us at this time to set examples for us all. Certainly Justice Warren or even Texas' U. S. District Court Judge William Wayne Justice may be frowned on by the right wing of our political spectrum but at least they were honorable and conscionable and stood their ground on issues protecting average individual's civil rights and liberties and attempted to foster what godly men should in that position.

Petitioner contends that there is very little case law regarding extensions of time for appellants to file their appellant's brief or regarding requests by appellant's for transmission of case files from U. S. District Court to Fifth Circuit Court of Appeals or eventually to the appellant for

full and adequate preparation to file an adequate and accurate appellant's brief. There are numerous cases involving the deadlines for filing notice of appeal and even in those cases, there are many relaxations of rigid policies in that particular area for good cause. Certainly extension of time to file appellant's brief is nowhere near as rigidly construed as the time limits for filing one's notice of appeal. Petitioner contends that there is also a dearth of case law on judicial abuse of discretion, judicial cronyism, and fraternity-minded behavior and rewarding one's cohorts by dismissing abusively potentially meritorious cases of average citizens, and almost no cases of significance in regards to judicial corruption and the holding of judges to any acceptable and reasonable standard of behavior and their abuse of discretion and blatant self-serving, greedy corruption at times. Petitioner has elucidated the Federal Rules of Appellate Procedure and the Fifth Circuit Court of Appeals Local Rules and also has delineated the 9 Moore's Federal Procedure and Wright and Miller's Federal Procedure remarks concerning extensions of time to file briefs should be construed liberally and granted liberally unless multiply filed

and abused. This is not the case for Petitioner especially in regards to the blatant misconduct and disregard to rules, statutes, prevailing case law, and any sensitivity to propriety by the U. S. District Court judge, magistrate, clerk, and the Fifth Circuit Court of Appeals judges, clerks, and case mangers. Although Petitioner is convinced that these collusionary complicitous "assistants" to these power-broking and influence-peddling law firms representing the defendants in this case, premeditatedly made the outcome a foregone conclusion by their numerous means of using technical, procedural, and logistical nuances to dismiss particular cases. Petitioner is going to make an attempt to, through his "Reasons for Granting the Writ" explain the rationale for this so that this honorable Supreme Court of the United States body can restore the integrity and honor "trashed" by the U. S. District Court and Fifth Circuit Court of Appeals in this case heretofore.

REASONS FOR GRANTING THE WRIT

I & II

I. IT WAS INAPPROPRIATE, UNJUST, AND ABUSIVE FOR THE DISTRICT COURT AND THE COURT OF APPEALS TO DEPRIVE PETITIONER OF HIS APPEAL BY MISHANDLING THE RECORD

AFTER NOTICE OF APPEAL WAS FILED, FAILING TO ADHERE TO F.R.A.P. PROCEDURE, AND DENYING A REASONABLE FIRST EXTENSION OF TIME TO FILE APPELLANT'S BRIEF.

II. THE DISREGARD FOR ADHERENCE TO FEDERAL RULES OF APPELLATE PROCEDURE TO CREATE AND PREMATURELY COMMENCE HIS BRIEFING SCHEDULE INABILITY TO ACCESS THE COMPLETE TRANSCRIPT BY APPELLANT IS OVERLY RIGID AND HIGH-HANDED TREATMENT OF A PRO SE LITIGANT ADDRESSING COMPLEX AND CONTROVERSIAL ISSUES WHEREIN THE "COMMON POLICY" IS TO ALLOW THE APPELLANT TIME, ESPECIALLY ON FIRST APPLICATION TO ADEQUATELY AND COMPLETELY PREPARE AND SUBMIT HIS BRIEF AND HAVE ACCESS TO THE CASE DOCUMENTS WHEN OTHERWISE INACCESSIBLE, WHICH IS A STANDARDLY APPLIED AND RELATIVELY FREQUENT POLICY BY THE FIFTH CIRCUIT COURT OF APPEALS.

After filing a meritorious lawsuit albeit embarrassing and incriminating to defendants and the legal and judicial system as a whole, Plaintiff and his counsel vigorously and diligently pursued prosecution of this case only to have frustrating obstructions to discovery and other pretrial travesties premeditatedly done to make the dismissal of this case a foregone conclusion. After the precipitous dismissal of this case and appropriate "Notice of Appeal" was filed by Petitioner, appropriate and timely procedural fulfillments by Plaintiff were accomplished only to have the technical, procedural, administrative and logistical obstructions by the U. S. District Court and it's clerk's office collude with the defendants in "sabotaging" attempts by plain-

tiff to have the F.R.A.P. and Fifth Circuit Local Rules adhered to in conjunction with prevailing case law, standard operating procedure relative to other cases, and some semblance of consideration and fairness given to plaintiff in his attempts to have an opportunity to adequately fully and completely and accurately brief his case so that it could be presented to the review appellate courts for their consideration. The abuse and application of every discriminating rule and procedure interpretation was applied to plaintiff and petitioner to obstruct his ability to brief his case and therefore obstruct not only his appeal process but justice. The flagrant flaunting of such deprivation, abuses and discrimination against plaintiff and petitioner is probably the most heinous of the injustices committed.

"Notice of Appeal" filed August 18, 1989 (App. H) was not docketed until September 15, 1989 and no agreement of the parties or orders from the district or circuit court were executed to retain all of the records in the district court judges and clerks possession. Petitioner designated the records to be transmitted which was not done. Transcription of statement of facts was difficult to obtain even

though payment and arrangements were done early on by petitioner. One particular statement of facts was not corrected until late May 1990. Request by defendants for sanctions and appeal dismissal filed August 10, 1989, in the Fifth Circuit Court of Appeals was denied by the Fifth Circuit (App. D) only to be considered by the U. S. District Court and granted on presentation later on March 25, 1990. This court made nearly inaccessible the file for Petitioner to review in preparation of his appellants brief even knowing that his attorney had abandoned him and taken all of his records from him. The complete record had not been transmitted from district to circuit court but allegedly on April 13, 1990 a briefing schedule which appellant received some 2 weeks later on April 26, 1990 (App. K) was sent to Petitioner giving him 40 days from April 13, 1990 to file his appellants brief. Petitioner was assured by deputy clerk Windhorst and case manager Varino that requests for extension of time in this complicated case being pro se and applying on the first occasion would be surely granted. Petitioner requested transmission of the records on appeal (App. L) May 12, 1990 and on April 20, 1990

submitted a request for extension of time to file appellants brief (App. AC) for the Fifth Circuit court per Fifth Circuit case manager Varino's instruction. On May 23, 1990 the Fifth Circuit clerk stated this appellants extension request would be presented May 30, 1990 to the Fifth Circuit panel via correspondence (App. M) and appellant on June 1, 1990 responded to defendants objection for this extension of time and transmittal of record which were ultimately denied by a single panel member judge Jerry Smith June 5, 1990 (App. A). Appellant on June 18, 1990 submitted his "request for rehearing, etc" (App. O) which suggested disqualification of Judge Jerry Smith under U.S.C. § 455 and adequately explained good cause reasons for the extension previously denied. This also was denied by three member panel (App. B) on July 5, 1990 which culminated in this case's dismissal (App. C) July 9, 1990.

Appellant and Petitioner pointed out that on January 29, 1990 (App. P.) U.S.D.C. clerk sent Fifth Circuit clerk request for delay in fulfilling local rule 11.2 obligation of the U.S.D.C. clerk office. This was not within 15 days of the filing of "notice of appeal" per F.R.A.P. 11 and addition-

ally on February 23, 1990 (App. Q) and March 19, 1990 (App. R) the same request was made by the U.S.D.C. clerk's office. On March 27, 1990 (App. S) Fifth Circuit clerk informed U.S.D.C. clerk that "the records should be complete for the purposes of this appeal. We would appreciate your now forwarding the record forthwith pursuant to F.R.A.P. 11. (Partial records)." Petitioner contends there is no order of the U.S.D.C. or Fifth Circuit court or agreement of parties to allow for "partial record" or other divergence from or modification of the standard rules of procedure in handling the record on appeal. Who contrived this process of handling the record without documentation of such in the file of this case? Is this simply another of the illegal exparte communications between judges and clerks and courts to accomplish their premeditated purpose of prejudicing certain individuals' cases hopefully to assist in their premature demise?

Yet on April 6, 1990 (App. T) the Fifth Circuit clerk was informed by the U.S.D.C. clerk that additional extension of time was requested because of "motions pending" alluding to the March 21, 1990 motion for reimbursement

of fees and expenses for sanctions against plaintiff, which was filed some six months after plaintiffs filing "notice of appeal" and not within the jurisdiction of the U. S. District court. The U.S.D.C. clerk very astutely and cunningly attempted to utilize the misinterpreted exception that a statement certifying the complete record was in their possession and sending such copy to the Fifth Circuit court assuming it would suffice as opposed to following the "letter of the law" in the rules of appellate procedure for handling such record. On April 11, 1990 (App. U) U.S.D.C. clerk informed Fifth Circuit clerk that "the following documents are transmitted" . . . "partial record per your request". There was no record sent except a statement that they had the record in their possession and that is inadequate according to any rules of appellate procedure, prevailing case law, or standard operating procedure in handling most cases. This cunning deception is further assistance in obstruction of justice in Petitioner's prosecution of his cases in appellate review. On April 13, 1990 the Fifth Circuit court clerk informed the petitioner (App. V) that the "record on appeal has been filed" indicating that the

"record on appeal is being retained in the district court. partial record on appeal has been filed on this date." This document is similar to the April 13, 1990 (App. K) document and also misrepresents that any of the records had been filed by stating that a "partial " record was filed. This is not just "semantics" but fails to comply with the F.R.A.P. and LR of the Fifth Circuit. On April 20, 1990 (App. W) the U.S.D.C. clerk notified the Fifth Circuit clerk that the "partial record on appeal per your letter" was transmitted. Petitioner claims that no such letter exists in this case file for justification of such according to F.R.A.P. and Fifth Circuit local rules requiring agreement of the parties or order of the district court or Fifth Circuit court, especially after requests for transmittal of the record by one of the parties formally submitted and filed in both courts. On April 30, 1990 (App. X) the Fifth Circuit clerk informed the U.S.D.C. clerk that "it would appear. . .the record should be complete for purposes of this appeal. We would appreciate your now forwarding the record forthwith pursuant to F.R.A.P. 11 (partial record)." There was a notation on the document stating that the "record cannot go, motions pend-

ing, RV notified-May 4, 1990." Again May 21, 1990 (App. Y) U.S.D.C. clerk informed Fifth Circuit clerk that further extension was requested because of motions pending indicating again motions filed March 21, 1990 and May 16, 1990 both of which were filed nearly 8 and 10 months after notice of appeal was filed and certainly abrogated the U.S.D.C. jurisdiction and should not have been used to preclude transmittal of this record on appeal. On May 31, 1990 (App. Z) the Fifth Circuit clerk informed petitioner that the corrections of a particular transcript which had been delayed by the court reporter for the magistrate in the U.S.D.C. would be submitted for consideration to the Fifth Circuit court most saliently in petitioners mind to indicate further failure of completion of the record and premature issuing of the briefing schedule by Fifth Circuit case manager some two weeks prior to this date. Again on July 2, 1990 (App. AA) the U.S.D.C. clerk informed the Fifth Circuit clerk that the "record is incomplete in this court at this time". This was the "reason for delay in the above mentioned appeal". On the front sheet of the index of this case (App. AB) the cause is listed as "Right to

Due Process of Law in Connection for a State Court Custody Suit 42 U.S.C. § 1983 and 28 U.S.C. § 2201 and 2202. Petitioner contends this is a prejudicing and biasing attempt to characterize this as pertaining to a state court custody suit which it does not. Certainly the emotional and blood boiling bias and prejudice that the judiciary holds in regards to divorce and custody matters "turns them off" to considering the real merits of a law suit which is mischaracterized as relating to "state court custody suit" when it is definitely not. The issues of the 1983 civil rights aspect of this case were foreclosed by the premature severing of that portion and dismissal of many of the defendants by the presiding U. S. District Judge DeAnda in this case for "damage control" and to make the "burden of proof and threshold to be met" much more difficult to surpass summary dismissal. It is apparent by perusing the "docket sheet" (App. AB) on page 59 Appendix that after petitioners "notice of appeal" was filed on August 18, 1989, numerous matters were submitted for consideration after this court lost it's jurisdiction to the Fifth Circuit court. The orders of May 12, 1990 (App. AE) and June 5, 1990 (App. AF)

dealt with issues filed subsequent to petitioners "notice of appeal" as was the rationale for petitioner filing (App. AD) "plaintiffs motion to show authority" in the U.S.D.C.

As listed by petitioner in the section of "Constitution, Statutes, Rules and Treatises" the violation of several F.R.A.P. and Fifth Circuit Local Rules has been demonstrated. The content of the record to be transmitted after filing "notice of appeal" was not complied with. The cunning surreptitious attempt to substitute a single sheet of paper indicating that the entire file was in the U.S.D.C. clerks and judge's possession does not comply with the rule and prejudices appellant who needed access to that file to fully and adequately prepare his appellants brief which was nearly totally inaccessible to him at the U.S.D.C. level. The difficulty in obtaining statement of facts and clarifying one particular statement of facts with significant "delay" makes the record incomplete until this has been fulfilled. Petitioner made Herculean efforts and fulfilled his obligations in completing and having transmitted the record on appeal which fell on "deaf ears". The record was not bound by the clerk nor were the pages sequentially numbered nor

did the court reporter request extensions of time nor did the clerk submit a record of lists of documents correspondingly numbered with this "alleged certified document" that the record was on file in the U.S.D.C.. No such certified document exists in this case's file except that previously mentioned in correspondence from U.S.D.C. to Fifth Circuit court clerk. There was no order of the district court or the Fifth Circuit court nor agreement stipulated by the parties for retention of this record after notice of appeal was filed and jurisdiction accrued to the Fifth Circuit, especially in light of the insistence by the petitioner to transmit the record so he could gain access to it in preparation of filing his appellant's brief. No certified copy of docket entries was transmitted by the clerk, and even had it been done, that is subject to the right of petitioner to designate the record to be transmitted which petitioner did September 29, 1989 and again with his request to transmit the record May 12, 1990. The court reporter did not request an enlargement of time for filing a statement of facts with corrections made in one particular hearing which were submitted near the end of May 1990 (obviously too

late for utilization in appellant's brief prior to dismissal of extension request). The clerk must determine when the record on appeal is complete or else request additional time by enlargement until such is complete. Certainly until the file is complete it cannot be sequentially numbered and bound then transmitted to the Fifth Circuit court which would then start the "briefing schedule." The clerk of the U.S.D.C. did not enter appellant's appeal until nearly one month later. On which occasion did the Fifth Circuit court clerk and case manager assume that the transmitted record was complete and then instituted a briefing schedule for petitioner? Up to and after the time of briefing schedule there were still delays requested by the U.S.D.C. clerk's office to make the appeal record "complete".

Both deputy clerk and case manager of Fifth Circuit court stated that first request extension of time to file appellant's brief was reasonable and routinely granted at the Fifth Circuit; a single judge of a court of appeals may grant or deny requests but cannot dismiss or otherwise "determine an appeal outcome" without review. Certainly the clerk can "enlarge a time for filing designations and . . .

and filing briefs. . . . A single judge may enlarge for good cause times for extensions but not for initiating an appeal.

The district court failed and refused for 10 months to compile and transmit the record of this case to the court of appeals as required by rule 11, F.R.A.P.; extensive exparte and deceptive maneuvering occurred and April 3, 1990 the clerk prematurely issued appellant's briefing schedule with full knowledge of the extenuating circumstances that should have precluded that act. The file was retained allegedly to hear pre-appeal matters but it is clear that post-appeal matters were being adjudicated without U.S.D.C. jurisdiction and as means of delaying and precluding transmission of this record to the Fifth Circuit where petitioner could gain access to it to fully and adequately prepare his appellants brief. Case manager of Fifth Circuit stated that petitioner would be deserving of a "new briefing schedule" but after "exparte contact with the Fifth Circuit court panel" she informed petitioner that he would have to file a formal motion for extension and she was not allowed to grant such in this particular case.

"The steps in assembly and filing of the record are governed by rules 10, 11 and 12" 9 Moore's Federal Practice, § 210.03, page 10-11 (3/80). The district court clerk repeatedly obstructed and delayed completion of the record while orchestrating a symphony of harassing,tardy, frivolous, post-judgement motions by the powerful defendants and their unprincipled mercenary councils. Petitioner has in spite of onerous interferences and obstructions met his burden diligently and fully to have the record complete and transmitted. The U. S. District Court Judge and Clerk knew that this case was going to be "deep-sixed" and petitioner contends that the illegal exparte interlocking network between the U. S. District Court and Fifth Circuit Court of Appeals "cronies and good ole' boys" assured this. No due process order "for use in U.S.D.C. pending the appeal" has been filed. No order of the court to transmit a certified copy of docket entries in lieu of the entire record has been filed. No stipulation by the parties concerning such has been agreed to or filed. "When an appeal is taken from a final judgement that disposes of the entire action below, the record is no longer needed in the district court

and there is no inconvenience attendant upon its transmission as the record on appeal." 9 Moore's Federal Practice, § 211.12 (2), p. 11-40(3/80). Rule 12(b) establishes the check point and briefing schedule sequence and the Fifth Circuit clerk has never been authorized to file a briefing schedule pursuant to rule 31, F.R.A.P.. The execution of the unauthorized premature briefing schedule invited and issued under questionable circumstances by the clerks of the U.S.D.C. and Fifth Circuit courts attempted to justify itself by cryptic related transmittals by U.S.D.C. clerks to and from Fifth Circuit clerks. It is grossly unjust and unconscionable to effectively dismiss appellants entire appeal due to the clerks intentional and mal-administrative, negligent, and dereliction of clearly prescribed and routinely applied rules,duties,customs and practices of the court of appeals and its clerk.

Rule 11, as amended in 1979, imposes no duty on the appellant to see that the record is transmitted within any fixed time and eliminates all motions for extension of time for transmission. The transmission of the record under the amended rule is the clerks work and dereliction and

prompt transmission purely a matter of judicial administration. 9 Moore's Federal Practice, § 211.05, p.11-18 (3/80).

The crucial intentional and negligent error is the clerk of the court of appeals fraudulent notice of receipt of and the filing of the "record transmitted pursuant to Rule 11 b, or the partial record transmitted pursuant to Rule 11 (e), (f), or (g), or the clerks certificate under Rule 11(c)" and thereby triggered appellants briefing schedule under Rule 31(a), F.R.A.P.. To deprive an appellant his right of appeal in this extremely controversial case under the foregoing circumstances of total laxity and probable malice by the clerks of the District and Appeals Court in light of the courts "general policy", practice and custom to grant liberal extensions of time to prepare and file appellants brief is an extremely harsh and unreasonable prejudice and bias against appellant.

The want of published decisions on the subject suggest that extensions of time requested before the time has run are granted with a much more generous hand; and occasional observations in the decisions verify this suggestion.

F.N.11: see e.g., Business Forms Finishing Service, Inc. v. Carson, 463 F.2d 966 (7th Circ. 1971) in which the appeal was dismissed for failure to file a brief within the eleventh extension of time, perhaps an unusual example of this tolerance. 9 Moore's Federal Practice, § 226.02 (2), p. 26-7(3/80).

There are very few cases available concerning the denial of first extension to file appellants brief and the mishandling of the record on appeal which ultimately culminates in the demise of the appellants brief and then his entire case.

In Supreme Court Practice by Stearn, U.S. v. Ohio Power Co. states the Supreme Court Justices "have consistently ruled that the interest and finality of litigation must yield where the interest of justice would make unfair the strict application of our rules. This policy finds expression in the manner in which we have exercised our power over our own judgements, both in civil and criminal cases." In Price v. McGlathery, harsh sanctions such as dismissal or rigid applications relative to motions filed by litigants which have severe outcomes must show "a clear record of

delay or contumacious conduct by the plaintiff and lesser sanctions (actions) would not serve the best interest of justice." Intentional delay by the plaintiff or actual significant prejudice to defendant must be considered. Certainly in denial of an extension to file appellant's brief which was not predicated on appellant's failure to perform adequately appears to be not only harsh but intentionally frivolous and political in nature. In Tuney v. Ohio a fair trial and a fair tribunal is a basic requirement of due process. Fairness requires absence of actual bias and for a judge to perform his high function in the best way "justice must satisfy the appearance of justice" (Offutt v. U.S.). In Adamson v. California judges overly political influence turning unduly them to subjective preferences of the parties makes the judicial decision maker a violator of the impartial tryer of law and of other constitutional granted rights to access to the courts and equal application and enforcement. In petitioner's case one can understand as in Bavouset v. Shaw's of San Fran. that sometimes confusion results from the withdrawal of a litigants council and that should be considered in ruling on future motions and applying rigid standards tc that liti-

gant. In cases considering "notice of appeal" denials of extension to file, a rigid standard is followed. In cases such as Kicklighter v. Nails by Jenee and Cole v. Tuttle, the court was unwilling to deny an appeal on technical difficulties resulting in harsh penalties as it was not keeping with the "spirit of the Rules and Justice". Certainly extension of time to file appellant's brief is nowhere near comparable to the rigidity utilized in time constraints on filing ones notice of appeal. In Dalminter Inc. v. Jesse Edwards, in addressing federal cases such as R.I.C.O. matters, the dismissal of a case or refusal of motions of relief must be considered with more laxity if "honest mistakes " are made and characterized and justified as such. Certainly in Draper v. Washington and cases similar the need to satisfy certain conditions or to convince a judge that there is merit and no frivolousness to an allegation in a case before one is allowed to appeal is harsh and arbitrary besides capricious and constitutionally abusive.

In Florida v. Rodriguez the U.S. Supreme Court as the Court of last resort in the federal system, has supervisory authority and therefore must occasionally perform a "pure

error correcting function" in federal litigation. In Hurtado v. California the classic statement in the Supreme Courts jurisprudence is that "law is something more than mere will exerted as an act of power. It must not be a special rule for a particular person or a particular case, but. . .the general law. . .so that every citizen shall hold his life,liberty,property and immunities under the protection of the general rules which governs society thus not excluding due process of law," . . . "Arbitrary power enforcing its edicts to the injury of the persons and property of its subjects is not law whether manifested as the decree of a personal monarch or an impersonal multitude." In Grannis v. Ordean the fundamental requisite of due process is the litigants desire and right "to be heard". In Liljeberg v. Health Services the aspect of judicial corruption with secrecy addressed the issues that such "star chamber" approach to judicial propriety creates fraud, dishonesty, deceit and misrepresentation. In both Lindsey v. Normat and Griffin v. Illinois, the opportunity to appeal is cherished and when not granted to some, capriciously and arbitrarily denied to others, violates the equal protection clause and goes to the

heart of our belief "objective review by appellate courts" of lower courts. Certainly in Marbury v. Madison the concept of judicial review as "the fundamental and paramount will of the nation" seems to be fading in this country with time. The U.S. Supreme Court has its own personal agenda to hear approximately 100 cases each year and they must be of a particular character before they will or can address them. This certainly leaves the vast majority of citizens unserved by this U.S. Supreme Court if it feels it is "put upon" and that its docket is being congested by citizens who feel they are treated unfairly by lower courts and wish, deserve and should be given the fair and impartial appellate review as our constitution, founding fathers and public perception intends. Perhaps the accelerated corruption and blatant disregard for rules, procedures, prevailing case law and constitutional protections demonstrated at U.S. District Court and Circuit Court levels is because of their assurance that this will go unchecked by the U.S. Supreme Court either by virtue of their personal agenda or their known desire to dismiss essentially all cases unless it strikes their "fancy". One cannot eliminate corruption;

arbitrariness, capriciousness, retaliation and illegalities in our lower courts if the most supreme appellate body refuses to consider the average citizens complaints on review.

In Marshall v. Jerrico the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by effected individuals in the decision making process is the most paramount importance. Failure of securing a fair disinterested and impartial tribunal creates a lack of due process for appellants. In Matthews v. Eldridge the degree and type of procedural protection that is due can be determined by weighing the private interests that will be affected by official actions and the risk of erroneous deprivation of such interests through the procedures used and the probable value, if any, of additional or substitute procedural safeguards. Certainly, the government's interest is in the fiscal and administrative burdens created by these additional functions, and the unquantifiable human interest in receiving decent treatment must be considered. Justice Holmes, in McAuliff v. New Bedford, states rights stemming from constitutional or common law sources and mere privileges bestowed by government is the

"court adhered to distinction" though the latter and not the former could be withheld absolutely and conditionally. In Alcorn v. U.S. Interstate Supplies, the decision for no new trial before appealing in federal court is addressed. Certainly this and other decisions are attempting to set precedent that the most expeditious and less obstructive way an individual can access himself to the appellate process is most desirable. In National Hockey League v. Met Hockey Club the promulgation that sanctions less severe than dismissal (or high-handed motion ruling) even if the litigant was negligent, serves to penalize by punishment rather than deterance and was advised against in a case where litigant failed to make discovery. Certainly, the various circuit courts feel differently at different times concerning the laxity or rigidity they adhere to certain rules and guidelines applied to litigants especially depending on their specific and particular situation. When intentional abuse by rigid standards and severe penalties are foisted upon a litigant consistently throughout his case's litigation, the circumstantial accumulation renders that judge and his

"assistants" incredible, unscrupulous, and lacking integrity and conscionability.

In Nicodemus v. Chrysler Corp., judicial bias was clear in remarks made by a judge which disqualified him because of these extra-judicial sources. Petitioner contends that Judge Jerry Smith's prior participation in litigation as city attorney for Houston involving this petitioner antagonistically disqualified him because of that conflict. Instead, Judge Smith acted vindictively and in retaliation and then was supported by his "cohorts and colleagues."

This protective proclivity of the judges of the Fifth Circuit Court of Appeals smacks of "protecting each others rears" through the system of "good-old-boy-get-along-gang" which is in diametric opposition and contra-distinction to all the basic tenants of our judicial heritage and perceived judicial propriety. Because of this, it is even more important for the Supreme Court to become more involved and allow average citizens to have their complaints reviewed and liberally allow them remanded for consideration or reviewed and considered at the U.S. Supreme Court level or else our system of justice is facially intact but in reality

and practice, is "bankrupt" and undependable in chaos. In Olmstead v. United States, Justice Brandeis warned that individual morality, integrity, courage, and insight were necessary and that hypocritical justifications imperils our government and society. Our government teaches the whole people by its example, and if it becomes the law-breaker, it breeds contempt for the law. For government to commit crimes to secure the conviction (or selective dismissal) would bring terrible retribution. Justice Holmes states about the moral principle of the judiciary that the government should not itself foster and pay for other crimes when they are the means by which the evidence is to be obtained. Government as judge and prosecutor may have its hand in dirty business and judges should not be allowed such inequities to succeed. In Reserve Mining Company, the 8th Circuit removed the district judge after deliberate denial of due process to the parties, along with gross bias exhibited against one litigant. In Schacht v. U.S., there was relaxation of rigid standards and procedures such that the best ends of justice shall be met and according to their requirements. In Smith v. Jackson Tool

and Dye the interests of "spirit of law" and "merits of case" should outweigh the procedural adherence when ruling on motions o. finality by judges. In Ryland v. Shapiro, the constitutional right of access to the courts is basic to our system of government, addressing Constitutional Article 4, Amendments 1, 5, and 14, and 28 U.S.C. § 1983 in a civil rights law suit. Conspiracy to obstruct justice here along with the discriminatory, class-based, personal animus is discussed which Petitioner contends prevails in his case. Also, Yick Wo v. Hopkins discussing the ordinance which appears fair on its face and impartial in its appearance was adjudicated as representing a class-based discriminatory personally invidious animus to one individual who represents similar others in a non-class action lawsuit. Petitioner contends his pro se status and his revealing the "dirty laundry" of the power-brokers and influence-peddlers of the legal and judicial system creates this same class-based discriminatory personally invidious animus toward him. This precludes his right to fair and impartial tribunal, access to the courts, access to be heard, equal application and enforcement of laws and substantive due process

through conspiracy of the administrative and judicial system where average citizens must redress their ills. In McFerran, discussion of a R.I.C.O. case dismissal on technical grounds indicates its inappropriateness when the merits are overwhelming and outweigh such technicalities. In U.S. v. Johnston perhaps the courts policy to "not grant certiorari" to review evidence and discuss specific facts; "is the license that the district court and the court of appeals used to avoid review of their scheme to protect their dishonest, fabricated, and fictitious scenarios to cover up, dismiss and discourage legitimate claims that foster increased expense, family destruction, public bitterness and cynicism and ultimate destruction of our society. In U.S. v. Brown, the putrid atmosphere of tyranny and corruption of "secretness" protected and encouraged by immunity from accountability and failure of review by higher appellate courts can be only redressed by opening all court proceedings and voiding and sanctioning all results that are tainted by partiality, dishonesty, fraud, deceit, and misrepresentation. Justinian stated over 1,000 years ago "impartiality is the life of justice." There is no room for bias and preju-

dice. It countenances no unfairness and upholds no miscarriage of justice. Bias and prejudice can deflect the course of justice and affect the measure of its judgments.

III & IV

III. THE ACTUAL DISHONESTY, FRAUD, DECEIT, AND MISREPRESENTATION OF A DISTRICT COURT AND THE FIFTH CIRCUIT COURT OF APPEALS IN THEIR PROCEEDINGS AND ACTIONS IN THIS CASE DEMONSTRATE REVERSIBLE DEPRIVATION OF FAIR AND IMPARTIAL TRIBUNAL, SUBSTANTIVE DUE PROCESS, EQUAL APPLICATION AND PROTECTION, AND ACCESS TO THE COURTS, BOTH IN THE TRIAL AND APPEAL COURTS OF THIS CASE.

IV. THE EXTRAORDINARY AMOUNT OF TIME, EFFORT, MONEY, AND SIGNIFICANTLY COMPLEX AND CONTROVERSIAL ISSUES INVOLVED IN THIS CASE WHEREIN DEFENDANTS REPRESENTED BY THE MAJOR POWER-BROKER AND INFLUENCE-PEDDLER LAW FIRMS WHO HAVE REPRESENTATIVE JUDGES ON THE FIFTH CIRCUIT COURT OF APPEALS OR VERY CLOSE TIES THERE, WHICH ALLOWED THE FIFTH CIRCUIT COURT OF APPEALS SINGLE JUDGE, THEN THREE-MEMBER PANEL OF JUDGES TO MORE EASILY BE RIGID WITH APPELLANT SO AS TO PRECLUDE HIS FILING AN ACCURATE AND COMPLETE BRIEF AND THEREBY OBSTRUCTING HIS APPEAL PROCESS AND JUSTICE.

The constitution of the United States preamble along with its amendments 1, 5, 7, 8, and 14, and articles 3 and 4, have been quoted in Petitioner's "Constitution, Statutes, Rules, and Treatises" section of this petition. Nowhere is it more important than in our federal court system that impartial and fair tribunal, equal access to the courts to be heard, equal application and enforcement, and substantive

due process be given the greatest of considerations. State courts in Texas are run by elected judges, many of which are "bought and paid for" and brag about this in the media. One's disenchantment with this dilemma can only be uplifted by one's confidence in the federal judicial system to have a higher degree of integrity, professionalism, conscionability and ethics or else our system of justice is totally fraudulent and bankrupt. If the power-brokers and influence-peddlers through the "good-old-boy-get-along-gang" wish to terrorize and brutalize and destroy an individual or his family, friends, or his "class" similar to him, they can, in our state court system by appellate courts rubber-stamping trial courts and state supreme courts refusing to even consider the court of appeals decisions except in rare instances. Our citizens have looked to the federal courts to protect their fundamental rights and liberties under possibly a current misconception, but still exists that we are protected by our heritage of the constitution. Citizens have become totally alienated and disenchanted with their legislators and realize that the government exists for self-serving greedy purposes, with secondary benefits to citizens.

The federal judiciary has been above this in the past and "keeps the thugs and thieves in line." It now appears through evolution that our judicial courts are becoming public opinion reflectors, policy and legislative makers, and individuals who can be lobbied, influenced, and bribed much like our "corrupt congressional representatives."

Petitioner filed under 42 U.S.C. § 1983 the civil rights complaint for injunctive, declarative and damage relief which happened to have started from a divorce proceeding but continued through other non-divorce related litigation and even into bankruptcy areas. Petitioner to this day has had no contact with his children for the past three years because of the deprivations, unable to be addressed effectively in the judicial system by dismissal of this part of Petitioner's original lawsuit by U.S.D.C. presiding judge James DeAnda. Under 18 U.S.C. §§ 1961 and 1966, R.I.C.O. acts were alleged because of the increasing sophistication and development of the conspiracy of racketeers in this enterprise of defendants. The general distaste of federal courts for the civil R.I.C.O. statute enacted by Congress because of the failure of district and U.S. attorneys

to redress ills perpetrated upon its citizenry (because of their political and financial manipulations), and oftentimes R.I.C.O. and 1983 civil rights suits surrounding access to children as one element of the case automatically precludes its full and complete fair hearing. The original complaint of Petitioner and its amended complaints are so voluminous and complex as to be unable to be discussed even briefly in this petition. The obstruction to discovery by the presiding U.S. District judge and magistrate and clerk's office is blatantly apparent. The "delay" created "staleness" in this case by Judge DeAnda and was planned to make its dismissal a foregone conclusion. Petitioner and his attorney spent many hours and much effort and money to address this appropriately. To discover the more incriminating and embarrassing testimony elicited engendered more rigid obstruction by the "collusion" of the presiding U.S. District judge and magistrate, U. S. District Court clerk, defendants and their power-brokers and influence-peddler attorneys, and the business and commerce industrial cartel of the legal and judicial system in Harris County, Texas. The October 16, 1987 "Memorandum and Order" (App. G)

completely misrepresents the facts of this case. Once this false premise has been established, the court attempted to justify it with statutes and case law. The aspect of misrepresentation permeates much of the U. S. District Court and circuit court debacles. Petitioner was denied adequate discovery and after over two years delay wherein correspondence could not "get this case off square A" the judge of this case refused to allow discovery until the first pretrial conference set the guidelines and rules. When discovery commenced and critical witnesses were deposed when incriminating evidence was elicited, the judge or magistrate would stop the discovery and have another hearing which was often postponed and rescheduled further obstructing the discovery process, which has by case law been given greater latitudes in R.I.C.O. cases in the interpretation of cases such as Hickman v. Taylor. Federal courts have much broader discovery guidelines to begin with and this was reemphasized in Salter v. Upjohn, where although the court has broad discretion over discovery matters, adherence to prevailing case law should be allowed so that full and complete discovery can be allowed to overcome the

burden of the R.I.C.O. statute prerequisites to overcome summary dismissal (Devitt & Black Supp. 1987) and (Civil R.I.C.O. Statutes and Implied Elements, 14 Tech. L. Rev. 377 (1983), Patton.)

The refusal of many deponentsto appear for their deposition without courts'compelling or sanctioning them for such indicates the apathy and lack of concern for the seriousness of this case by presiding U.S. District judge and his magistrate. The inability throughout this case to depose the prime defendant, power-broker and influence-peddler Defendant Fullenweider, and to be inadequately allowed to depose because of restrictions Defendant Nancy Linkous, Muriel Flake, and Don Fogo further indicate the bad faith of the presiding U.S. District judge and magistrate to have this case terminated. The continuing to address new submitted motions after notice of appeal was filed by Petitioner and using this excuse as one of many not to transmit the transcription of statement of facts to the Fifth Circuit Court of Appeals ultimately precluded Petitioner's appeal and culminated in his cases dismissal. This case is extremely complicated and even without the

improprieties delineated heretofore by Petitioner would require an "Extension of Time to File Appellant's Brief" by even the most talented attorney with large law firm support staff. For Petitioner pro se without assistance or financial resources and absent records by his attorney's abandonment there were good cause reasons for an extension. The rules and regulations violated by the court and clerk's office have been previously discussed and are additional rationale for granting the extension of time to file appellant's brief. The fact that Fulbright and Jaworski were prime defendant attorneys and who have Carroll Randall King as an influential member of the Fifth Circuit is another reason why Judge Jerry Smith and the three-member panel should have exercised more discretion and caution before cavalier denial of Petitioner's extension of time to file appellant's brief. The fact that Andrews Kurth was appointed to defend Defendant Nancy Linkous who was not indigent and filed a falsified CJA and in forma palperis affidavit is suspect, considering that one of the most prominent Fifth Circuit political judges is Edith Jones from Andrews Kurth who nearly was appointed to the U.S.

Supreme Court as associate justice. The other powerful law firms representing the defendants or having a direct interest for the defendants and against the Petitioner are well known in this community. In Hamilton v. Stovall, Petitioner Linkous was a participant plaintiff and that case was summarily run through the sieve and ultimately denied petition for Writ of Certiorari; Petitioner hired attorneys and paid large sums of money, and when it ran out, he continued his attempts to attain justice. Instead of being admired and respected by the judiciary, he has been slandered and "beaten down" much like the Russians treated their dissidents, life of Tolstoy and the plight of the Chinese students, Polish freedom fighters, and German Jews in the Nazi Germany holocaust. In Forester v. White, Pulliam v. Allen, Harper v. Merkle, Zarcon v. Perry, and Gregory v. Thompson, the scheme and unconstitutional conspiracy of these judges did not fall within the policy of underlying judicial immunity but fell outside such into the cesspool of abuse. Their dishonesty, fraud, and deceit counters the code of judicial conduct for U.S. judges, ABA Model Rules of Professional Conduct, ABA Model Code of

Professional Responsibility, ABA Model Standards Relating to Judicial Discipline, and the Texas Disciplinary Rules of Professional Conduct for Attorneys. In California Motor Transport v. Trucking Unlimited, NAACP v. Button, Wolff v. McDonnell, Rheaume v. Tx. Dept. of Pub. Safety, and Pulliam v. Allen, there were unreasonable deprivations of due process and access to the courts prohibited by the holdings of those cases' courts. These case[5] parallel Petitioner's plight in his case progression through the U. S. District Court and Fifth Circuit Court of Appeals. In Gleason v. Stewart, and Gleason v. DeAnda, the dismissing orders stated that the presiding judge liberally construed the allegations to support the intended purposes of the complaint; the court errs not only in its order statement but in its intent and motivation. It is a fact that attorneys in general and judges especially despise pro se litigants and state that they hold them to the same standards of attorneys when they really mean they apply a much "more rigid standard" to them without the flexibility given attorneys in similar situations. In Petitioner's case, the R.I.C.O. discovery was restricted to make its dismissal a predetermined,

foregone conclusion; R.I.C.O. is constructed as a mode of a treasure hunt (Sutliff Inc. v. Donovan Co., 727 F.2d. 658, 652 (7th 1984). Certainly, Thomas Moore's individual morality and integrity compared to Francis Bacon's arrogance and self-serving greed cost high court judge Moore his head and gained Bacon great wealth and notoriety. Only until Lord Coke prosecuted Francis Bacon did he receive his just desserts (Borkin The Corrupt Judge). In Peacock Records, when a judge has relied on extra-judicial sources and indicates personal bias and prejudice, he should be disqualified and his decision reversed. In Murchison, a fair trial and a fair tribunal is a basic requirement of due process. Fairness of course requires the absence of actual bias in the trial of cases. In Marshall v. Jerrico, the due process clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. The closed shop judicial industry of the national justice system oppresses those "who take on the system" regardless of how heinous the crimes are and how they brag about "being above the law" openly in public. In the Matter of DeLucia, a judge fabricated, backdated orders,

and made perjured denials under oath concerning his illegal behavior which resulted in his discipline and suspension. In re Gilbert, when there were higher judicial independence and integrity of the federal courts, this conduct heretofore was not upright and according to law as required by duties and obligations of a judicial officer and his oath to practice before the court or as a judge of the court. A basic premise of our judicial system is that those who serve in a judicial capacity will scrupulously adhere to the disciplinary rules of professional responsibilities and we shall not sanction or ignore deliberate or intentional breeches of these criteria. A judge who does favors with his office is morally an embezzler. A judge who is a man "who can be reached" and plays "Goodfellow" for even a few must be stained and therefore removed. (In re Wieshoff, 382 F.2d. 635 (N.J. 1977) quoting In re Mattera 168 A.2d. 38 (N.J. 1961). In Cincinnati Bar v. Heitzler, a judge flaunted his violation of the canon of ethics and the code of responsibility in discovery proceedings and was addressed with sanctions appropriately. In Haines v. Kerner, the standard of pro se litigants being given flexibility in having

their pleadings liberally construed connotes and infers some degree of laxity in other technical, procedural, administrative, and logistical areas. Unfortunately, this is not the standard and in Birl v. Estelle, the rigid limits of pro se are reemphasized. In Ferguson v. MBank Houston, the application of sanctions to pro se litigants indicates that no license to harass or clog the machinery or overload the dockets by pro se litigants will be tolerated. It seems as though certain attorneys and judges feel that individual citizens have no right to access to the courts to redress their grievances as some interpreters of the articles and amendments of the constitution believe. In re Boyd, schemes to cover up evidence by the judge was addressed by the Florida Supreme Court who admitted the "lack of comprehensive body of law relating to discipline of judges." Also In re Lamotte, and In re Leon, the integrity of judges came to question through improprieties resulting in judicial discipline, etc. In Gleason v. Huckabee, the charges against Judge Huckabee for falsely imprisoning Gleason as a subpoena server were remanded only if the condition of a $500 fine was paid by Gleason who was a pauper, and

this restriction exists much like a pole-tax or other device to preclude justice or constitutional rights. In Malhoit v. So. Cal. Retail Clerk's Union emphasizes the professional code requires that attorneys and judges not engage in conduct that involves misrepresentation or that is prejudiced to the administration of justice; that they not present claims unwarranted by existing law; and that they not knowingly make a false statement of fact or law.

In Mitchell v. Forsythe, there tends to be a less expansive judicial immunity for unconstitutional conduct without prior judicial authorization. Without clearly established statutes and constitutional provision in place which should be known by any reasonable person, then such judicial officer should not violate those without punishment. In Pryor v. U.S. Postal Service, the record must show dilatory or contumacious behavior before any harsh sanction to dismiss should be considered.

In Connelly v. Gibson, a 28 U.S.C. § 1983 complaint should not be dismissed unless it appears beyond doubt that the plaintiff can show no set of facts which would entitle him to relief. Both Haines v. Kerner and Cruz v.

Bello address the liberal construing of pro se pleadings in that regard. This also in Slavin v. Curry, is the standard. In Taylor v. S&D Enterprise, the first extension was granted and only on request for second extension because of other extenuating circumstances was it denied in this case; the court has discretion in cases for procedural and technical error but should not disturb the balance between case merits and rigid technicalities so lightly. In State of Texas v. Gulfwater, a pro se litigant was given latitudes because of the perceptions of lack of legal sophistication which allow tolerance to his conduct. In U.S. v. McKnight, liberal application to fulfilling procedural time constraints, especially in notice of appeal, was indicated for good cause although it was both mandatory and jurisdictional to adhere to specific guidelines. Lawrence v. McCalmont was much like Howard v. King that the existence of any non-frivolous issue on appeal is sufficient to require that the court grant the . . . motion. In Body v. Connecticut, the cost bond should not bar an appeal and access to courts by a litigant was upheld. In Feder v. Toledo and Bibich v. Cower, permissiveness was exercised in granting exten-

sions in many cases where reasonable cause was given in MOTIONS absent delay or prejudice to the opposing side demonstrated. In Delluns v. Powell, when a judge becomes investigative and commits other administrative acts prejudicial to one litigant, then he relinquishes his absolute immunity; in Dennis v. Sparks, the corrupt judge participated in an unconstitutional conspiracy which resulted in no judicial immunity. Most cases on judicial impropriety and/or personal agenda prejudice and/or illegalities are rare as hen's teeth. In Harlow v. Fitzgerald, the objective reasonableness of a official's conduct is considered with discretionary functions in a 1983 lawsuit but clearly established extraordinary participations were not immune if proven. This was considered a new relevant legal standard for the lack of immunity in specific areas. It, however, created greater latitudes of immunity for judges in that process. In Linkous v. Henderson an unsecured creditor was allowed appointment of a large law firm to represent her because she was a non-filing ex-wife of the debtor; the application for appointment was taken under advisement or denied on several previous occasions but was agreed to

only in anger after misrepresentations about Debtor Linkous in Court caused the judge to act precipitously on a motion not before him granting large sums of money to the attorneys at the expense of the estate and real creditors. This case was appealed and was obstructed at all levels with the request for extension of time to file petition for Writ of Certiorari denied by the U.S. Supreme Court. In Linkous v. Johnson, an illegal conspiracy allowing an unsecured creditor and attorneys to take a major asset of the bankruptcy estate (nearly $500,000 value) for their benefit in state court and sanctions imposed upon debtor for bringing witnesses to court to testify to such was appealed and similarly denied at all levels except that extension of time to file petition for Writ of Certiorari was granted but Petition for Writ of Certiorari was denied by the U.S. Supreme Court. In Linkous v. Klevenhagen, plaintiff was falsely imprisoned for 33 days for alleged non-full-payment of temporary child support which went through the state and federal courts and where the U.S. Supreme Court refused to entertain the matter because it "was of a divorce matter." In Linkous v. Linkous, a ridiculous di-

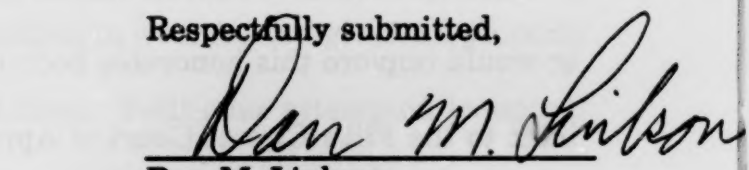
vorce decree was issued wherein Petitioner was without counsel in a jury trial against his ex-wife with power-broking attorneys and was assessed $17,500 per month in child support, $5 million in awards, and given all property plus custody of children. Petitioner attempted to appeal this divorce decree which the court of appeals stated informally was "ridiculous" but the cost bond was increased to $125,000 while Petitioner was in bankruptcy and could not obtain bond or post assets in lieu of increased cost bond. The increased cost bond issue was taken to the U.S. Supreme Court and denied generically without a written opinion. The brutalization of certain litigants without fair redress of ills perpetrated upon them only creates more dissension and cynicism of the public against the institution which is supposed to represent the best this country has to offer in a world of decaying morality and integrity.

CONCLUSION

For these various reasons mentioned heretofore this Petition for Writ of Certiorari should be granted. Petitioner would implore this honorable body to remand this case back to the Fifth Circuit Court of Appeals by approval of his Petition for Writ of Certiorari such that Petitioner has opportunity to brief his case and have it considered on its merits. In the alternative, Petitioner would request of this honorable body to allow briefing of his case with the U.S. Supreme Court and have decision rendered upon its merit by this honorable body. Petitioner contends that review of the propriety of the denial of appellant's extension of time to file appellant's brief which culminated in the dismissal of the appellant's case on review was abuse of discretion of the single judge of the Fifth Circuit Court of Appeals which was upheld not on its merit but for reasons of "judicial fraternity" in controversial decisions and matters such as these. Petitioner would request this honorable body to

review the closely related issues of the other cases involving Petitioner mentioned in the table of authorities in this case.

Respectfully submitted,



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